1902

EMPEROR v. GIRAND.

the person concerned. It is true, as I have already said, that the Code of Criminal Procedure does not in distinct terms require that such notice should be given, but it is expedient, and highly desirable for the ends of justice, that a date should be fixed for hearing, and that notice of such date should be given to the person concerned. As it is clear in this case that no such notice was given to the applicants, and they had not an opportunity of being heard, I must set aside the order of the learned Sessions Judge, and send back the case to him with directions to pass proper orders after fixing a date for hearing, and giving due notice thereof to the persons concerned. I order accordingly.

1903
February 28.

APPELLATE CIVIL.

Before Mr. Justice Burkitt and Mr. Justice Aikman.

ANANT RAM (DEFENDANT) *v.* CHANNU LAL AND ANOTHER (PLAINTIFFS).*

Act No. IX of 1872 *(Indian Contract Act), section* 239—*Partnership—Joint Hindu family—Rights and liabilities of a partnership composed partly of individual members of a joint Hindu family and partly of strangers.*

In a suit for accounts and division of profits of a partnership alleged to have been previously dissolved, such partnership having been composed of certain individual members of a joint Hindu family, and of one person who was a stranger to the family, it was *held* on a plea taken as to non-joinder of necessary parties, namely, other members of the joint Hindu family—(1) that a member of an undivided Hindu family may enter into a contract in his individual capacity, and when suing to recover moneys due to him under that contract, he need not join the members of the joint family as plaintiffs, and (2) that members of an undivided Hindu family who are minors, and who are not shown to have been admitted into the trading firm, or to have taken part in its business, need not be made parties as plaintiffs to a suit to recover moneys due to the family trading firm. *Kalidas Kevaldas* v. *Nathu Bhagvan* (1), *Imam-ud-din* v. *Liladhar* (2), *Samalbhai Nathubhai* v. *Someshvar* (3), *Alagappa Chetti* v. *Vellian Chetti* (4), *Jugal Kishore* v. *Hulasi Ram* (5), *Ramsebuk* v. *Ramlall Koondoo* (6), *Jagabhai Lallubhai* v. *Rustamji Nasarwanji* (7), and *Lutchmanen Chetty* v. *Siva Prokasa Modeliar* (8), referred to.

* First Appeal No. 185 of 1900 from a decree of Munshi Shiva Sahai, Subordinate Judge of Cawnpore, dated the 13th of July 1900.

(1) (1883) I. L. R., 7 Bom., 217.
(2) (1892) I. L. R., 14 All., 424.
(3) (1880) I. L. R., 5 Bom., 38.
(4) (1894) I. L. R., 18 Mad., 33.
(5) (1886) I. L. R., 8 All., 264.
(6) (1881) I. L. R., 6 Calc., 815.
(7) (1885) I. L. R., 9 Bom., 311.
(8) (1899) I. L. R., 26 Calc., 349.

1903

ANANT RAM v. CHANNU LAL.

THIS was a suit for dissolution of partnership, or rather, as the partnership had admittedly been dissolved some years before suit, a suit to have accounts taken and profits divided. The plaintiffs and four out of the five defendants were descendants of one Sheo Lal, who, with his sons Balkishan and Sita Ram, was the owner of a prosperous trading firm known by the style of Sheo Lal Balkishan. That firm by partition and subdivision was broken up and came to be represented by three firms known by the names of Sheo Lal Sita Ram, Lalman Lachman Das and Gobind Prasad, all started by and belonging to descendants of Sheo Lal. In the year 1873 a new and distinct firm was started. The persons who established it were one Lalman and certain individual members of a joint family descendants of Sheo Lal. This Lalman was a stranger to the family of Sheo Lal. The new firm took the name of Channu Lal Lalman. At starting the agreement was that the capital, Rs. 1,000, should be contributed by the members of the firm who were descendants of Sheo Lal, while Lalman contributed only his business ability. Lalman was to receive half the profits, the other half going to the members of the family of Sheo Lal. The firm so constituted continued to trade, prosperously on the whole, for some years. It was dissolved, according to the plaintiffs in 1896, according to the defendants in 1892, and out of its dissolution arose the present suit for accounts and distribution of profits. The Court of first instance found that the partnership had subsisted till 1896, and passed a decree for the taking of accounts down to that year. One of the defendants, the son of Lalman, appealed to the High Court, and the principal question raised was whether the suit was or was not bad for non-joinder of parties, namely certain members of the family of Sheo Lal.

Pandit *Sundar Lal*, Pandit *Moti Lal* and Pandit *Baldeo Ram Dave*, for the appellant.

Babu *Jogindro Nath Chaudhri*, Mr. *R. Malcomson* and Babu *Satya Chandra Mukerji*, for the respondents.

BURKITT and AIKMAN, JJ.—In this suit the plaintiffs Channu Lal and Bindraban prayed to have a partnership between themselves and the defendant dissolved, to have the

1903

ANANT RAM v. CHANNU LAL.

accounts of the partnership taken, and for payment to them of their share of the divisible profits. But as admittedly the partnership had been dissolved some years previously, the real object of this suit is to have the accounts taken and profits divided. There were five defendants impleaded. Of them, four appeared and defended the suit.

It is unnecessary to discuss all the matters raised by them. Practically only two important issues were raised and decided at the hearing before the lower Court. Those issues arose out of the pleas as to non-joinder and limitation, and were decided by the lower Court in favour of the plaintiffs respondents. Hence this appeal, which has been instituted by one only of the defendants, namely, by Anant Ram. The others have submitted to the decree. The appellant disputes the decision of the Subordinate Judge on both the questions indicated above. As to the first of those questions, his contention is that the suit is bad, and not maintainable because certain persons who, he contends, were necessary parties have not been impleaded in it. To understand the meaning of this plea it is necessary to enter into the history of the firm in question in this suit.

The plaintiffs and the defendants (with the exception of the appellant Anant Ram) are descendants of one Sheo Lal, who, with his sons, Balkishan and Sita Ram, was owner of a prosperous trading firm known by the style of Sheo Lal Balkishan. That firm by partition and sub-division has been broken up, and is now represented by three firms known by the names of Sheo Lal Sita Ram, Lalman Lachman Das and Gobind Prasad, all started by and belonging to descendants of Sheo Lal. In the year 1873 (1930 S.) a new firm (quite separate from any of those just mentioned) was started. The persons who established it were one Lalman and certain individual members of a joint family, descendants of Sheo Lal, who are now represented by the plaintiffs and the first four defendants. The Lalman just mentioned (who must not be confounded with the Lalman who is a defendant in the suit) was not a member of the family, and was an entire stranger to the ancestral family firm of Sheo Lal Balkishan. The new firm started in 1873 took the name of Channu Lal Lalman, Channu Lal (one of the plaintiffs here) being one of Sheo

Lal's descendants and Lalman being the stranger. This is the firm the account of which the plaintiffs seek to have taken. At starting the agreement between the parties was that the capital, Rs. 1,000, should be contributed by the parties who were descendants of Sheo Lal, while as to Lalman it was agreed that he should not be required to put it in any capital. He was to contribute his brains (*i. e.*, his business capacity) to the business, no doubt as the working partner, and was to take one half of the profits as his share, the other moiety going to the other partners. The firm so constituted continued to trade, prosperously on the whole, up to S. 1953 (1896), according to the plaintiffs, when they say it was dissolved, but according to the defendants up to S. 1949 (1892) only. The above then being the admitted facts as to the establishment and constitution of this firm, the appellant contends that the suit is bad because the sons of the plaintiffs and the sons of some of the defendants (including his, the appellant's sons) have not been made parties to it. Most of these omitted parties, we may mention, are minors, some of them being of tender years. The contention is that, as by Hindu law a son on birth acquires an interest in his father's ancestral property, the sons of the plaintiffs and of the defendants, who have not been impleaded, being co-owners with their fathers in the interest of latter in the firm were necessary parties to the suit and should have been impleaded in it. Now in dealing with this contention it is most essential to bear in mind that the firm Channu Lal Lalman was not an ancestral Hindu family firm belonging to the members of a Hindu joint family, and as such, subject to the peculiar rules by which such a firm is governed. The relationship between the persons who established this firm was not that created by the personal law and arising out of the status of the members of a Hindu joint family, but that which takes its rise from a contract between partners as defined in section 239 of the Contract Act. The firm was an ordinary commercial trading firm, consisting of several persons who had agreed to combine their property, and skill in the business of purchasing and selling cloth at a profit, dividing the profits among themselves in certain proportions. Whatever may be the rules which govern an ancestral

1903

ANANT RAM v. CHANNU LAL.

joint Hindu family partnership, they cannot, in our opinion, affect a firm such as that which we have before us in this case. Whatever may be the interests which under Hindu law sons possess in their father's property in a joint Hindu family, the answer to the appellant's contention is that, so far as the firm of Channu Lal Lalman is concerned, the sons who have not been impleaded were never partners in that firm, and therefore were not necessary parties to this suit. The partners in the firm are the survivors of the persons who originally established it, together with representatives of the deceased partners who were admitted as partners with the unanimous consent of the surviving partners. This, for instance, was done in the case of the appellant Anant Ram on the death of his father Lalman, and also in the case of Lalman on the death of his father Lachman Das. The members of the firm apparently did not act on the rule by which a trading firm is dissolved by the death of one partner. They simply by consent admitted a son of the deceased partner in the room of the latter, and went on as before with the business. From this action we gather that this was in accordance with the agreement entered into when the partnership was started. The persons of whose absence from the suit the appellant complains could not have in any way controlled or interfered in the conduct of the business. They could not have demanded an inspection of the account-books of the firm, nor could they have brought about a dissolution of the partnership or a winding up of the business. It may be that, as between themselves and their respective fathers, the latter under the rules governing a joint Hindu family are accountable to their sons for the profits they may receive from the business, just as they might be accountable to them for dividends received on shares in public companies; but that does not make the sons partners in the firm any more than in the public companies. Several reported cases were cited to us, and discussed at length by the learned advocate at the hearing of this appeal. None of them, however, seem to have much bearing on the question we have to decide. In *Kalidas Kevaldas* v. *Nathu Bhagvan* (1) one member of a joint Hindu family sued in his

(1) (1883) I. L. R., 7 Bom., 217.

own name to recover a debt due to a joint family, which consisted of himself and two brothers. It was held that the brothers were necessary parties, and that in their absence the suit could not be maintained. This case evidently has no bearing on the question before us, the facts being quite dissimilar. To the same effect is the rule laid down in *Imamuddin* v. *Liladhar* (1). It approves of and follows the rule laid down in I. L. R., 7 Bombay. The case of *Samalbhai Nathubhai* v. *Someshvar* (2) has no bearing on the case before us. It was a suit against the members of a joint ancestral Hindu trading firm, in which it was held that all the members were responsible for a debt contracted by the firm. The rule laid down in the case of *Alagappa Chetti* v. *Vellian Chetti* (3) and in *Jugal Kishore* v *Hulasi Ram* (4) and in *Ramsebuk* v. *Ramlall Koondoo* (5) is the same in all respects as in 7 Bom., 217 already referred to. In the case of *Jagabhai Lallubhai* v. *Rustamji Nasarwanji* (6) the suit was one to determine the rights of the parties in respect of certain advances of moneys made by the plaintiff appellant to enable the defendant respondent and another to carry out a building contract. It was objected that the plaintiff being a member of a joint Hindu family was incompetent to sue without joining his three brothers as co-plaintiffs. It was, however, held by the Chief Justice, who delivered the judgment of the Court, that "as the contract was entered into with the plaintiff in his individual capacity, and not on behalf of the family, there was nothing on the face of the contract to show that he was acting on behalf of the family firm, and the plaintiff was entitled to sue alone." This case has a material bearing on the question now before us. For there is nothing to show that the persons who, in 1873, entered into a contract with one who was not a member of the family to establish the firms of Channu Lal Lalman acted on behalf of the joint family of which they were members, or that they acted otherwise than in their individual capacity, nor is there anything to show that Lalman, when he entered into an agreement with certain individuals to establish a trading business, contemplated the inclusion as partners in the firm of all the sons

(1) (1892) I. L. R., 14 All., 524.
(2) (1880) I. L. R., 5 Bom., 38.
(3) (1894) I. L. R., 18 Mad., 33.
(4) (1886) I. L. R., 8 All. 264.
(5) (1881) I. L. R., 6 Calc., 815.
(6) (1885) I. L. R., 9 Bom. 311.

1903

ANANT RAM v. CHANNU LAL.

already in existence and to be born in the families of those individuals. It follows, therefore, that it is not necessary to make such sons parties to a suit like the present. The last case discussed before us was that of *Lutchmanen Chetty* v. *Siva Prokasa Modeliar* (1), in which in a suit to recover the amount due on a promissory note payable to a Hindu family trading firm, it was held to be unnecessary to implead infants (possibly of tender years) not shown to have been admitted into the trading partnership or to have taken any part in the business or exercised any control over it.

Now the great difference between all the above cases and the facts in the appeal before us is that not one of them touches the case in which the partners of the trading firm were (as here) members of different families who entered into a contractual partnership in the terms of section 239 of the Contract Act. It is with the incidents of such a partnership that we are concerned, and not with those of a joint Hindu family trading firm. But still we gather from those cases—(1) that a member of an undivided Hindu family may enter into a contract in his individual capacity, and that when suing to recover moneys due to him under that contract he need not join the members of the joint family as plaintiffs, and (2) that members of an undivided Hindu family who are minors, and who are not shown to have been admitted into a trading firm, and to have taken part in its business, need not be made parties as plaintiffs to a suit to recover arrears due to a family trading firm. This latter rule has special application to the present case, in which most (if not all) of the absent parties are minors, and some of them are children of tender years.

On the whole, therefore, as to this question of misjoinder, we are of opinion that the suit is not bad by reason of the absence from it of the sons of the plaintiffs, and of the sons of the defendants, including those of the appellant. We think the lower Court was right in the conclusion at which it arrived as to this matter.

[The Court then took up the second question, which turned on findings of fact, and agreeing with the Subordinate Judge dismissed the appeal with costs. The remainder of the judgment is therefore not reported.—ED.]

Appeal dismissed.

(1) (1899) I. L. R., 26 Calc., 349.