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Hindu with knowledge of his wife's pregnancy was not invalid. The same view was held by the Bombay High Court in *Hanmant Ramchandra* v. *Bhimacharya* (1). I may also refer to Mayne's Hindu Law, 7th Edition, p. 137, and Sircar's Tagore Law Lectures, 1891, p. 190. No original authority of Hindu law has been cited on behalf of the appellant in support of the contrary view, which seems to be opposed to general principles. I accordingly dismiss the appeal with costs.

Appeal dismissed.

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February 2.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

SHAMRATHI SINGH AND OTHERS (DEFENDANTS) v. KISHAN PRASAD AND OTHERS (PLAINTIFFS).*

Hindu law—Joint Hindu family—Family business—Suit to recover a debt due to the firm—Parties to such suit.

Held that the managing members of a joint Hindu family carrying on a joint family business are not entitled to maintain a suit in their own names against debtors of the family without joining with them in the suit either as plaintiffs or defendants all the other members of the family. *K. P. Kanna Pisharody* v. *V. M. Narayanan Somayajipad* (2), *Balkrishna Moreshwar Kunte* v. *The Municipality of Mahad* (3), *Ramsebuk* v. *Ramlall Koondoo* (4), *Kalidas Kevaldas* v. *Nathu Bhagvan* (5), *Imam ud-din* v. *Liladhar* (6), *Alayappa Chetti* v. *Vellian Chetti* (7) and *Anyamuthu Pillai* v. *Kolandavelu Pillai* (8) referred to. *Puteshri Partap Narain Singh* v. *Rudra Narain Singh* (9) distinguished.

THIS was a suit to recover a sum of Rs. 9,240-7-0 alleged to be due to the plaintiffs by the defendants on an account stated on the 9th of August 1901. The plaintiffs, Kishan Prasad, Bishan Prasad and Jamna Prasad, sued as managers of a joint family business styled Manorath Bhagat Dhana Ram carried on in the District of Ballia. The suit was filed on the 3rd of June 1904. The debt sought to be recovered represented, according to the plaintiffs, the balance upon various money dealings between them and the defendants, and it was alleged that the account

* First Appeal No. 31 of 1905 from a decree of Maulvi Syed Muhammad Tajammul Husain, Subordinate Judge of Ghazipur, dated the 24th of September 1904.

(1) (1887) I. L. R., 12 Bom., 105.
(2) (1881) I. L. R., 3 Mad., 234.
(3) (1885) I. L. R., 10 Bom., 32.
(4) (1881) I. L. R., 6 Calc., 815.
(5) (1883) I. L. R., 7 Bom., 217.
(6) (1892) I. L. R., 14 All., 524.
(7) (1894) I. L. R., 18 Mad., 33.
(8) (1899) I. L. R., 23 Mad., 190.
(9) (1904) I. L. R., 26 All., 528.

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had been adjusted on the 9th of August 1901, and the balance admitted by the defendants Shamrathi Singh, Mahadeo Singh and Rajinandan Singh. In their written statements the principal defendants took objection that the suit could not be maintained without all the members of the plaintiffs' family being made parties to it. In consequence of this objection the plaintiffs on the 22nd of August 1904 applied to the Court to have the other members of the family made parties. In the result, by an order of the Court of the 8th of September 1904 certain members of the plaintiff's family, were added as plaintiffs, and two as defendants; the original plaintiffs, however, contended that they as the managing members of the family were entitled to sue in their own names on behalf of the rest of the family. This contention was admitted by the Court (Subordinate Judge of Ghazipur), which passed a decree in the plaintiffs' favour. Against this decree the defendants appealed to the High Court, contending that the original plaintiffs were not entitled to sue alone and that by the time the other members of the family had been made parties to the suit it was barred by limitation.

Mr. *Muhammad Raoof* and Munshi *Govind Prasad*, for the appellants.

Mr. *Abdul Majid* and the Hon'ble Pandit *Sundar Lal*, for the respondents.

STANLEY, C.J., and BURKITT, J.—The main question in this appeal is one of limitation. The suit was brought to recover a sum of Rs. 9,240-7-0 alleged to be due on foot of an account stated on the 9th of August 1901. The plaintiffs Kishan Prasad, Bishan Prasad and Jamna Prasad instituted the suit on the 3rd of June 1904 as managers of a joint family business, styled Manorath Bhagat Dhana Ram, carried on in the District of Ballia, to recover the debt which was due by the family of the defendants in respect of money dealings. The dealings between the parties had been carried on for several years, and on the 9th of August 1901 the accounts were adjusted, when the defendants Shamrathi Singh, Mahadeo Singh and Rajinandan Singh admitted the correctness of the balance and affixed their signatures to the account, Mahadeo Singh signing it on behalf of himself as well as of Shamrathi Singh.

In their written statements the principal defendants objected to the array of plaintiffs complaining that all the members of the plaintiffs' family had not joined in the suit. In consequence of this objection on the 22nd of August 1904 the plaintiffs applied to the Court to have the other members of the family added as parties, stating in their petition that they (the original plaintiffs) were the managers of the firm and on that account brought the suit in their own names alone, but that with a view to remove the objection of the defendants, they desired that the names of the other members of the family should be brought on the record. By order of the 8th of September 1904 the plaintiffs 4—12 were brought on the record as plaintiffs, and Mahadeo Prasad and Chhote Lal, two members of the family, were added as defendants. If the added plaintiffs were necessary parties to the suit, it is admitted that on the 8th September 1904, when they were added as plaintiffs, the suit was barred by limitation. But on behalf of the respondent it was contended that the original plaintiffs were the managing members of the joint family and as such were entitled to institute the suit in their own names alone on behalf of themselves and the other members of the family. The learned Subordinate Judge acceded to this contention and passed a decree in favour of the plaintiffs.

One of the grounds of appeal is that a decree against the persons of the minor defendants ought not to have been granted. Mr. *Sundar Lal* on behalf of the respondents admits that this is so, and so far as the minor defendants are concerned the decree should be satisfied out of the joint family funds alone. So far the appeal must in any case succeed.

As regards the main question it is first necessary to determine whether or not Kishan Prasad, Bishan Prasad and Jamna Prasad were the managing members of the family when the suit was brought. It appears that at the time of the institution of the suit dissension existed between some of the members of the plaintiffs' family and hence we find two of them supporting the defendants' case. The evidence of these two witnesses only has been translated and printed by the appellants. These are the depositions of Sarju Prasad and Lachhmi Prasad, sons of the plaintiff Kishan Prasad, and themselves plaintiffs. Sarju Prasad

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deposed that there was no leading member in the family since about 1890, and that the business of the firm was carried on under the orders of all the proprietors. Then he modified this statement and said that the names of those by whose orders the business was carried on were Kishan Prasad, Bishan Prasad, himself (the witness), Jamna Prasad and Lachhmi Prasad. In cross-examination he stated that all the suits relating to the family, the ilaka or the firms brought since 1890 were instituted in the names of Kishan Prasad, Bishan Prasad and Jamna Prasad only, or in the name of Debi Prasad as long as he lived. Debi Prasad we may mention was a son of the plaintiff Jamna Prasad. We now come to the evidence of Lachhmi Prasad. He deposed that hundis were drawn by the firm under the signatures of all—and then he said they are "signed by any of us who happen to be present." He admitted, however, that the names of Kishan Prasad, Bishan Prasad and Jamna Prasad were entered in respect of the whole ilaka and the names of the other members of the family were not so entered. As against this evidence we have the evidence of the plaintiffs Bishan Prasad and Kishan Prasad who deposed that they and Jamna Prasad were the managing members of the family.

The learned Subordinate Judge came to the conclusion on the evidence that the original plaintiffs were the managing members of the family and sued as such, and we have no hesitation whatever in agreeing with him as to this. The question then is whether the managing members of a joint family carrying on a joint family business are entitled to maintain a suit in their own names against debtors of the family without joining with them in the suit either as plaintiffs or defendants all the other members of the family.

The learned Subordinate Judge held on this point that inasmuch as all the business carried on by the plaintiffs' family was carried on in the names of the three original plaintiffs, and that all suits relating to the family which had been previously instituted in the Civil or Revenue Courts had been instituted only in the names of these plaintiffs, therefore the suit was properly instituted in their names for the benefit of all the members of the family, and that it was not necessary

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for the other members to join in the suit or to be made parties to it.

The Subordinate Judge is in error in saying that the business was carried on in the names of the three original plaintiffs. It was carried on in the name of the plaintiffs' firm. The evidence of Bishan Prasad, Muhammad Suleman and Amjad Ali Khan coupled with the plaintiffs' own statement in the plaint shows this.

If the question had been an open one, there is a good deal to be said in favour of the view taken by the Court below; but it appears to us that it is concluded by authority. In the case of *K. P. Kanna Pisharody* v. *V. M. Narayanan Somayyipad* (1) it was held by Turner, C.J., and Kindersley, J., that "unless where by a special provision of law co-owners are permitted to sue through some or one of their members all co-owners must join in a suit to recover their property. Co-owners may agree that their property shall be managed and legal proceedings taken by some or one of their number, but they cannot invest such person or persons with the competency to sue in his own name on their behalf or if sued to represent them." Sargent, C. J., adopted this statement of the law in the case of *Balkrishna Moreshwar Kunte* v. the *Municipality of Mahad* (2). In the case of *Ramsebuk* v. *Ramlall Koondoo* (3) two of the sons out of a joint Mitakshara family, consisting of a father and three sons, and the widow and sons of a deceased son, and carrying on business in partnership, sued on a *hath-chitta* for recovery of the amount payable thereunder. When the suit came on for hearing an objection was taken that all the parties who ought to sue were not on the record. Thereupon on the application of the original plaintiffs the names of the father and the third son were added and the plaintiffs were described as surviving partners of the deceased son. At the time these additional persons were made parties, the suit was as regards them barred by limitation. It was held that inasmuch as the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs, and the added plaintiffs were barred by section 22 of the Limitation Act, the claim of the original plaintiffs was also barred. Garth, C. J., who delivered the judgment of the Court, in the course of it observed:—"When a joint family, or

(1) (1881) I. L. R., 3 Mad., 234. (2) (1885) I. L. R., 10 Bom. 32.
(3) (1881) I. L. R., 6 Calc., 815.

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any members of it, carry on a trade in partnership and contract with the outside public in the course of that trade, they have no greater privilege than other traders. If they are really partners they must be bound by the same rules of law for enforcing their contracts in Courts of law as any other partnership." A similar decision was arrived at by a Bench of the Bombay High Court in the case of *Kalidas Kevaldas* v. *Nathu Bhagvan* (1). The same question was considered in the case of *Imam-ud-din* v. *Liladhar* (2). In that case a suit was brought upon two hundis by one only of two members of a firm. The defendants in their written statement, as here, raised the objection that all necessary parties were not joined as plaintiffs. Upon that the other partner applied to be made a co-plaintiff and the Court acceded to the application. At the time when he was made a co-plaintiff the suit was barred by limitation, and the Subordinate Judge on that account dismissed it. On appeal the District Judge allowed the appeal on the ground that the defendants did not raise the plea of non-joinder at the earliest possible period. On second appeal Edge, C.J., and Tyrrell, J., after a review of the authorities, set aside the order of the District Judge and affirmed the decree of the Court of first instance, holding that all the surviving partners of the firm should have been plaintiffs in the suit; and further that where a judge, acting under section 32 of the Code of Civil Procedure, adds a person as a necessary plaintiff after the period of limitation for a suit by him alone, or with others, has expired, section 22 of the Indian Limitation Act, 1877, would clearly apply to the right of suit of the person so added, and the suit could not be maintained without him. In Madras it has been held that the proposition that the manager of a Hindu family can sue without joining those interested with him is one which cannot be supported. *Alagappa Chetti* v. *Vellian Chetti* (3) and *Angamuthu Pillai* v. *Kolandavelu Pillai* (4).

Mr. Mayne in his work on Hindu Law in dealing with this question says, at pp. 368 and 369 of the sixth edition:—"A necessary consequence of the corporate character of the family

(1) (1883) I. L. R., 7 Bom., 217.
(2) (1892) I. L. R., 14 All., 524.
(3) (1894) I. L. R., 18 Mad., 33.
(4) (1899) I. L. R., 23 Mad., 190.

holding is that wherever any transaction affects that property all the members must be privy to it, and whatever is done must be done for the benefit of all, and not of any single individual. For instance, a single member cannot sue or proceed by way of execution to recover a particular portion of the family property for himself whether his claims be preferred against a stranger who is asserted to be wrongfully in possession or against his co-parceners. If the former, all the members must join and the suit must be brought to recover the whole property for the benefit of all.", and later on:—" One member cannot sue by himself without joining or asking the consent of the others and making the defect good by joining the others as defendants. If from any cause, such as lapse of time, the other members cannot be joined as plaintiffs, the whole suit will fail."

Our decision in the case of *Pateshri Partap Narain Singh* v. *Rudra Narain Singh* (1), which has been relied on by Mr. *Sundar Lal*, does not help the contention advanced on behalf of the respondents. That decision was based upon the peculiar circumstances of the case. The objection raised as to non-joinder of parties was not pressed by the defendants, and it was only on appeal that we pointed out the defect in this respect and amended it. We observed in our judgment that if the question had been raised at the trial, the plaintiff would no doubt have obtained in good time the consent of his brother to his name being added to the array of parties to the proceedings.

For the foregoing reasons we allow this appeal, set aside the decree of the Court below, and dismiss the plaintiffs' suit with costs in both Courts.

[See also *Gopal Das* v. *Badri Nath* (2).—Ed.]

Appeal decreed.

(1) (1904) I.L. R., 26 All., 528. (2) Weekly Notes, 1904, p. 282.