

1908
June 29.

Before Mr. Justice Aikman and Mr. Justice Griffin.

HAZARI MAL (DEFENDANT) v. BHAWANI RAM AND ANOTHER (PLAINTIFFS)
AND PANNA LAL AND ANOTHER (DEFENDANTS) *

*Civil Procedure Code, section 34—Non-joinder of parties—Objection not taken
at the earliest opportunity—Limitation.*

An objection as to the non-joinder of parties alleged to be necessary ought to be raised by the defendant at the earliest opportunity; where this is not done and the parties omitted are in consequence, not added until after the expiry of the period of limitation for a suit against them, the defendant will not be permitted to take advantage of the bar of limitation.

Pateshri Parthap Narain Singh v. Rudra Narain Singh (1) and Gurwoyya Gowia v. Dattatraya Anant (2) followed. Shamrathi Singh v. Kishan Prasad (3) distinguished.

THE facts which gave rise to this appeal are as follows:—

The plaintiffs, Bhawani Ram and Jawahir Lal brought the suit on the allegation that they with one Rakhab Das were proprietors of a banking and commission firm at Secundrabad, and that Hazari Mal, the principal defendant, was indebted to the firm. Rakhab Das did not join in the suit, and was made a *pro forma* defendant. The suit was filed on the 16th of August 1906. The defendant Hazari Mal filed a written statement on the 5th of September 1906. In that he took no objection to want of parties. Upwards of six months afterwards, namely on the 20th of March 1907, he took objection to the effect that the two minor sons of Rakhab Das ought to have been joined as parties to the suit and that in their absence the suit could not proceed. Thereon the plaintiffs, in order to remove this objection, though not admitting that the minors were necessary parties, applied for their names to be added, and this was done. Objection was then taken that the suit could not be maintained, as it was barred against the added defendants at the time their names were brought upon the record. The Court of first instance, relying on the decision in *Shamrathi Singh v. Kishan Prasad (3)*, held that the minors were necessary parties, and as they were not joined as *pro forma* defendants until after the period of limitation for the suit, it could not be maintained. Accordingly that Court dismissed the suit. On appeal the Additional District Judge, after

* First Appeal No. 19 of 1908, from an order of Muhammad Ahmad Khan, Additional Judge of Meerut, dated the 16th of December 1907.

(1) (1904) I. L. R., 28 All., 528. (2) (1908) I. L. R., 28 Bom., 11.

(3) (1907) I. L. R., 29 All., 311.

referring to certain rulings, allowed the appeal and remanded the case for decision on the merits. Against this order of remand the defendant Hazari Mal appealed to the High Court.

Babu Surendra Nath Sen, for the appellant.

Babu Durga Charan Banerji, for the respondents.

AIKMAN and GRIFFIN, JJ.—This is an appeal from an order of remand. The plaintiffs Bhawani Ram and Jawahir Lal brought the suit on the allegation that they with one Rakhab Das were proprietors of a banking and commission firm at Secundrabad, and that Hazari Mal, the principal defendant, was indebted to the firm. Rakhab Das did not join in the suit, and was made a *pro forma* defendant. The suit was filed on the 16th of August 1906. The defendant Hazari Mal filed a written statement on the 5th of September 1906. In that he took no objection to want of parties. Upwards of six months afterwards, namely, on the 20th of March 1907, he took objection to the effect that the two minor sons of Rakhab Das ought to have been joined as parties to the suit and that in their absence the suit could not proceed. Thereon the plaintiffs in order to remove this objection, though not admitting that the minors were necessary parties, applied for their names to be added, and this was done. Objection was then taken that the suit could not be maintained as it was barred against the added defendants at the time their names were brought upon the record. The Court of first instance, relying on the decision in *Shamrathi Singh v. Kishan Prasad* (1), held that the minors were necessary parties, and as they were not joined as *pro forma* defendants until after the period of limitation for the suit, it could not be maintained. Accordingly he dismissed the suit. On appeal the Additional District Judge, after referring to certain rulings, allowed the appeal and sent back the case for decision on the merits. The principal defendant Hazari Mal appeals from that order of remand. In our opinion this case is distinguishable from that relied on by the learned Munsif. The facts resemble more those of a case referred to in the ruling *Shamrathi Singh v. Kishan Prasad*, namely, the case of *Pateshri Partap Narain Singh v. Rudra Narain Singh* (2). In this case the objection

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to want of parties was clearly not taken at the earliest possible opportunity. The defendant belongs to the same caste and resides in the same place as the plaintiffs, and must be deemed to have known of the existence of the sons of Rakhab Das. Had he taken objection in his written statement, the case would have been different; but then, had he done so, the plaintiff could at once, within the period of limitation, have added the names of the minors. The defendant waited until a suit with the minors as defendants was barred by limitation and then took objection. In the case *Pateshri Partap Narain Singh v. Rudra Narain Singh* the learned Judges cited with approval a passage from a judgment of the Bombay High Court in the case *Guruvayya Gowda v. Dattatraya Anant* (1), where it is said:—"We must hold that the bar of limitation was not established, as the defendant's objection to non-joinder of parties having been taken at a late stage of the suit may be disregarded." We think that the Court of first instance ought not to have entertained the objection having regard to the provisions of section 34 of the Code of Civil Procedure. On the grounds stated above we uphold the decision of the Court below and dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

1908.
July 8.

Before Mr. Justice Richards and Mr. Justice Karamat Husain

EMPEROR v. KHEORAJ AND OTHERS *

Act No. I of 1872 (Indian Evidence Act), section 30—Confession—Joint trial—Plea of the guilty by one of the accused—Use of confession against the rest—Criminal Procedure Code, sections 271, 342.

Where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence with other co-accused and any statement in the nature of a confession that he may make used against them. *Queen Empress v. Paltna* (2) followed.

THE facts of this case are as follows:—

Sixteen persons were put on their trial on a charge of dacoity. Of these one Chidda, who had previously made a confession,

* Criminal Appeal No. 522 of 1908 against an order of Rti Baijuath, Additional Sessions Judge of Moradabad, dated the 21st May 1908.

(1) (1903) I. L. R., 28 Bom., 11. (2) (1500) I. L. R., 23 All., 53.