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virtue of such a custom the plaintiff, who is the holder of a share in the village, but not a co-sharer of the vendor, has no right of pre-emption." I see no reason to alter the opinion there expressed, and, as I have said above, I cannot distinguish the case before us from the Full Bench case of *Dalganjan Singh v. Kalka Singh*. I feel myself bound to follow the interpretation of the words *hissadaran deh* adopted by five learned Judges in that case. I would, therefore, dismiss the appeal.

BY THE COURT:—In view of the provisions of the Letters Patent the order of the Court is that the decree of the learned Judge of this Court be set aside and the decree of the lower appellate court be restored. The parties will abide their own costs in the High Court.

Appeal allowed.

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January 28.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
GULBA (DEFENDANT) v. BASANTA AND ANOTHER PLAINTIFFS) AND KISHAN LAL (DEFENDANT).*

Parties—Persons having the same interest in the subject matter of the suit—
Civil Procedure Code, 1882), section 30.

Where numerous persons are similarly interested in the subject matter of a suit, a suit brought by one or more of such persons for the protection of the rights of all is not bad because the plaintiffs may not have obtained the permission of the court under section 30 of the Code of Civil Procedure, 1882, to sue on behalf of all the persons so interested. *Zafaryab Ali v. Bakhtawar Singh* (1) and *Baiju Lal Parbatia v. Balak Lal Pathak* (2) followed.

THE facts of the case are fully stated in the judgment of the court.

Mr. A. H. C. Hamilton, for the appellant

Munshi Gulzari Lal, for the respondents.

STANLEY, C. J. and BANERJI, J.—The facts which gave rise to the suit in this case are these: Kishan Lal, defendant, mortgaged a *chawpal* to Gulba, appellant. A decree was obtained upon the mortgage on the 20th of August, 1907. Thereupon the plaintiffs, who are two of the members of the Lodh caste, brought the suit which has given rise to this appeal for a declaration that

* Second Appeal No. 924 of 1908 from a decree of Muhammad Husain, Officiating Additional Subordinate Judge of Aligarh, dated the 8th of July 1908, reversing a decree of Kunwar Sen Munsif of Bulandshahr, dated the 8th of April 1908.

(1) (1883) I. E. R., 5 All., 497.

(2) (1897) I. L. R., 24 Calc., 385.

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the *chaupal* with its appurtenant shops is owned and possessed by the plaintiffs, the first defendant Kishan Lal, and other members of the brotherhood, and that it is not liable to sale in execution of the decree obtained by the appellant against Kishan Lal. The plaintiffs state that the *chaupal* belongs to them and other members of the Lodh community; that the first defendant Kishan Lal, who is the *mukaddam* (i.e., headman) amongst the Lodhs, had no power to mortgage it; that the decree passed upon the mortgage is calculated to deprive the plaintiffs of their right and is prejudicial to them; that the plaintiffs are owners and shares in the *chaupal* and that they are competent to sue in order to protect their rights.

The defence was that the *chaupal* did not belong to the Lodh community but was the exclusive property of Kishan Lal, the mortgagor of the appellant. It was also asserted that the amount of the mortgage was taken for the purpose of reconstructing the *chaupal* and that therefore the plaintiffs were liable for the said amount. There was a further plea to the effect that the plaintiffs alone were not competent to maintain the suit.

The court of first instance found that the *chaupal* belonged solely to the defendant Kishan Lal. It was also of opinion that the plaintiffs alone could not maintain the suit, and accordingly dismissed the claim.

Upon appeal by the plaintiffs, the only issue framed by the lower appellate court was whether the *chaupal* belonged to all the Lodh community. The finding on that issue was in the appellant's favour, the learned Subordinate Judge being of opinion that the *chaupal* was not the exclusive property of Kishan Lal, and that it was the common property of the Lodh community. In respect of the plea that section 30 of the old Code of Civil Procedure was a bar to the suit, the court below held that the section did not apply.

It is contended before us in this appeal that the plaintiffs cannot maintain the suit as they did not obtain the permission of the court under section 30 of the Code of Civil Procedure, 1882, to sue on behalf of the Lodh community. In our judgment this contention is not well founded. Section 30 of the old Code, which corresponds to order 1, rule 8, of the present Code, is an

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enabling section and does not debar some of the members of a community from maintaining a suit in their own right. In the present case the plaintiffs alleged that the mortgage made by Kishan Lal, the first defendant, was calculated to interfere with their rights as some of the members of the Lodh community. Section 42 of the Specific Relief Act empowers a person entitled to any right in any property to institute a suit against any one denying his title to such right and the court may make a declaration that he is so entitled. As the plaintiffs alleged that their title to the property as part owners of the *chaupal* had been interfered with by the mortgage, they in our opinion are entitled to bring a suit for the protection of their rights. The principle of the ruling in *Zafaryab Ali v. Bakhtawar Singh* (1) seems to us to apply to this case. That was a suit by certain Muhammadans to set aside a mortgage of endowed property belonging to a mosque and a decree enforcing the mortgage. It was held that the plaintiffs were entitled to maintain the suit. Another case which has an important bearing on the question before us is that of *Baiju Lal Parbatia v. Bulak Lal Puthuk* (2). In that case the plaintiffs who alleged themselves to be members of a priestly community called *Gayawals* of the town of Gaya, and were the *panch* or representative committee of their community, sued for the removal of masonry structures raised by one member of the community. It was held that section 30 of the Code was an enabling section and did not debar the plaintiffs from suing in their own right for the relief claimed.

We are therefore of opinion that the Court below was right in holding that the plaintiffs were entitled to maintain the suit, and that section 30 of the old Code of Civil Procedure did not bar it.

There was one question however raised by the defendants in their defence, namely, that the amount of the mortgage was received for the construction of the *chaupal*, which has not been determined. If the appellant's mortgagor represented the Lodh community in the management of the *chaupal* and if he borrowed money for the repairs of the *chaupal*, the mortgage might be enforceable against the mortgagor and the mortgaged property.

(1) (1888) I, L. R., 5 All., 497.

(2) (1897) I, L. R., 24 Calc., 385.

This question the Court below did not try. We accordingly refer the following issues to that Court under the provisions of order 41, rule 25 of the Code of Civil Procedure:—

(1) Was the mortgage in favour of the appellant made by Kishan Lal to raise money for the reconstruction of the *chaupal*.

(2) If so, what powers had Kishan Lal in respect of the *chaupal*, and was he competent to mortgage it for the above purpose?

The Court will take such additional evidence as may be necessary. On receipt of the finding the usual ten days will be allowed for filing objections.

Issues remitted.

PRIVY COUNCIL.

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March 8.

MUNNU LAL AND ANOTHER (DEFENDANTS) v. GHULAM ABBAS AND ANOTHER
(PLAINTIFFS.)

[On appeal from the Court of the Judicial Commissioner of Oudh, at Lucknow.]
Minor—Representation of minor—Appointment of guardian ad litem—Absence of affidavit as required by section 456 of the Code of Civil Procedure (1882)—Suit by minors to set aside proceedings—Civil Procedure Code (1882), section 443.

Where an order was made by the court appointing a person guardian *ad litem* on behalf of certain minors in a suit in which a decree was duly made against them, *Held*, in a suit by the minors on attaining majority to set aside the decree and a sale in execution thereunder, that the absence of an affidavit such as is required by the provisions of section 456 of the Civil Procedure Code (Act XIV of 1882) at the time the application for the appointment of a guardian was made, was not sufficient to render the proceedings illegal and void as against the minors on the ground that they were not properly represented therein.

Walian v. Banke Behari Pershad Singh (1) followed.

The order being on the record the presumption was, in the absence of evidence to the contrary, that everything was regularly and properly done.

APPEAL from a decree (20th May 1907) of the Court of the Judicial Commissioner of Oudh, which reversed a decree (30th June 1906) of the Subordinate Judge of Bara Banki.

The principal question for determination in this appeal was whether the respondents, Ghulam Abbas and Ghulam Sarfaraz,

*Present:—*Lord MACNAGHTEN, Lord COLLINS, Sir ARTHUR WILSON and Mr. AMBER ALI.

(1) (1903) I. L. R., 30 Calc., 1021; L. R., 30 I. A., 132.