

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

DURGA PRASAD (PLAINTIFF) v. DAMODAR DAS (DEFENDANT)*

1909
December 19.

Hindu law—Mitakshara—Joint Hindu family—Agreement entered into with one member of family—Such member competent to sue without joining other members.

Where a contract is entered into on behalf of a joint family business by a member of the family in his own name, it is not necessary that any members of the joint family other than those who entered into the contract should be parties to the suit brought thereon. *Gopal Das v. Badri Nath* (1) followed. *Agacio v. Forbes* (2), *Bungsee Singh v. Soodist Lall* (3) and *Hari Vasudev Kamat v. Mohadu Dad Gauda* (4) referred to. *Shamrathi Singh v. Kishan Prasad* (5) distinguished.

THE plaintiff in this case came into court alleging that he had entered into a contract with the defendant for the purchase of certain bars of silver; that he had advanced to the defendant part of the price of the silver, but that the defendant had not delivered the silver. The plaintiff accordingly claimed damages for breach of contract. The defendant pleaded, *inter alia*, that the plaintiff, who carried on business along with other members of his family as dealers in gold and silver lace, was not competent to sue without joining as co-plaintiffs the other members of the family. The court of first instance (Subordinate Judge of Bareilly) gave the plaintiff a decree. On appeal, however, this decree was set aside by the District Judge upon the ground of non-joinder of necessary parties, and the suit dismissed. The plaintiff appealed to the High Court.

Dr. Satish Chandra Banerji (with him The Hon'ble Pandit Sundar Lal, and Pandit Baldeo Ram Dave), for the appellant:

It is not in every case where a Hindu joint family is interested in the result of a suit that they should be made parties thereto. In the present case the contracts were entered into with the plaintiff, after whom the firm was called, and the written agreements were executed in his favour alone. Upon the authorities, the plaintiff was clearly entitled to sue without impleading

* Second Appeal No. 856 of 1908, from a decree of W. H. Webb, District Judge of Bareilly, dated the 6th of August, 1908, reversing a decree of Girraj Kishor Datt, Subordinate Judge of Bareilly, dated the 13th of February, 1907.

(1) (1904) I. L. L., 27 All., 361.

(3) (1881) I. L. R., 7 Cal., 739.

(2) (1861) 14 Moo. P. C., 160.

(4) (1895) I. L. R., 20 Bom., 435.

(5) (1907) I. L. R., 29 All., 311.

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any co-parcener; *Gopal Das v. Badri Nath* (1), *Bungsee Singh v. Soodist Lal* (2), *Hari Vasudev Kamat v. Mahadu Dad Gavda* (3). The case in I. L. R., 29 All. 311, relied upon by the District Judge is distinguishable. Even if the analogy of the law of partnership be applied, that is in favour of the plaintiff; see Indian Contract Act, section 230, and *Agacio v. Forbes* (4). If the plaintiff acted as an agent it is not pleaded that the principal was disclosed.

Munshi *Gokul Prasad*, for the respondent:

The *sattas* properly interpreted are in favour of the firm and not in that of the plaintiff in his individual capacity. The existence of a written instrument does not make any difference in principle. It is the family which is interested in the contract and which must be represented in the suit. The authorities are collected in *Shamrathi Singh v. Kishan Prasad* (5) and *Sheshan Patter v. Veera Raghavan Patter* (6) and they entirely support the respondent.

Dr. *Satish Chandra Banerji* was not heard in reply.

STANLEY, C. J., and BANERJI, J.—The plaintiff in the suit out of which this appeal has arisen in conjunction with other members of his family carried on a business for the sale of gold and silver lace. His case is that on the 1st of August, 1903, the defendant sold to him through some brokers some bars of silver and took from the plaintiff Rs. 100 in cash by way of earnest money and promised to deliver the silver on a certain date; that subsequently the defendant took a further advance in respect of the sale of other bars of silver. The defendant failed to fulfil his contract, and the suit out of which this appeal has arisen was brought by the plaintiff for recovery of damages for breach of his contract by the defendant. On the occasion of the agreement the defendant executed *sattas* in favour of the plaintiff. The plaintiff, as we have said, carries on business along with other members of his family under the style of Durga Prasad. The defendant defended the suit on various grounds, and, amongst others, that the agreement entered into with the plaintiff was

(1) (1904) I. L. R., 27 All., 361.

(2) (1881) I. L. R., 7 Calc., 739.

(3) (1895) I. L. R., 20 Bom., 435.

(4) (1832) 14 Moo. P. C. 160.

(5) (1907) I. L. R., 29 All., 311.

(6) (1903) I. L. R., 32 Mad., 284.

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in the nature of a wagering contract and was, therefore not enforceable, and also that the plaintiff had no right to sue alone.

The court of first instance gave a decree in favour of the plaintiff, but upon appeal the lower appellate court dismissed the plaintiff's claim on the ground of the non-joinder in the suit of the other members of the plaintiff's firm. In dismissing the suit the learned District Judge held that the decision in *Gopal Das v. Badri Nath* (1), relying on which the court of first instance had decreed the plaintiff's claim, was not applicable, but that the case was governed by the ruling in the case of *Sham-rathi Singh v. Kishan Prasad* (2).

From this decision the present appeal has been preferred, and it is contended before us that the case is governed by the decision in *Gopal Das v. Badri Nath*. It is to be observed that the contract with the defendant was entered into by Durga Prasad alone and that *sattas* were executed by the defendant in his favour. It does not appear that at the time of the contract any mention was made of other members of the firm. We think in view of this that the learned District Judge was wrong in reversing the decision of the court of first instance. It has been held in a number of cases, including a case before the Privy Council, *Agacio v. Forbes* (3), that one partner, with whom personally a contract is made, is entitled to sue upon the contract in his own name, without joining his co-partners as plaintiffs. The rule of law governing a case of the kind is stated in the judgment in *Bungsee Singh v. Soodist Lall* (4). In that case a mortgage bond was executed in the name of the plaintiff alone, he being one member of a joint Hindu family, and it was held that he was entitled to sue as the person who entered into the contract, not only on behalf of himself but on behalf of the other members of the family. Again, in the case of *Hari Vasudev Kamat v. Mahadu Dad Gavda* (5), in which a loan was made to the defendant out of joint family funds, and a bond for the amount of the loan was given in the name of one of the members of the joint family, it was held that that member in whose favour the bond was given was competent to sue, and that the other members of the joint

(1) (1904) I. L. R., 27 All., 361.

(3) (1861) 14 Moo. P. C., 160.

(2) (1907) I. L. R., 29 All., 311.

(4) (1881) I. L. R., 7 Cal., 739.

(5) (1895) I. L. R., 20 Bom., 455.

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family were not necessary parties. The present case resembles that of *Gopal Das v. Badri Nath* (1), in which this Bench held that where a contract is entered into on half of a joint family business by the managing members of the firm in their own names, it is not necessary that any members of the joint family other than those who entered into the contract should be parties to the suit brought thereon.

The learned District Judge relied upon the ruling of a Bench of this Court, of which one of us was a member, in the case of *Shamrathi Singh v. Kishan Prasad* (2). The facts of that case are not similar to those of the present case. There the managing members of a joint Hindu family, carrying on a joint family business, instituted a suit in their own names against debtors of the family for a debt due to the family, without joining with them in the suit either as plaintiffs or defendants the other members of the family. That case is clearly distinguishable from the present. There the debt sought to be recovered was a debt due to the joint members of the family and it was accordingly held that some of the members only of the joint family could not maintain a suit for its recovery, without joining the other members of the family in the suit.

For these reasons we think that the decision of the learned District Judge is erroneous, and we set it aside. As he decided the appeal before him upon the question of non-joinder of parties and has not determined the other issues raised in the appeal, we remand the case under the provisions of order 41, rule 23, of the Code of Civil Procedure, to the lower appellate court with directions that it be readmitted in the file of pending appeals in its original number and be disposed of according to law. The appellant will have his costs of this appeal. All other costs will abide the event.

Appeal decreed and cause remanded.

(1) (1904) I. L. R., 27 All., 361. (2) (1907) I. L. R., 29 All., 311.