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effect of the two orders absolute of the 21st December, 1901, and the 27th November, 1905, made against the appellants and Sakina respectively, and which two orders are in effect on decree of the later date.

Their Lordships will humbly advise His Majesty that the appeals should be dismissed. The appellants will pay the costs.

*Appeals dismissed.*

Solicitors for the appellants :—*Ranken Ford, Ford and Chester.*

Solicitors for the respondent :—*Sanderson, Adkin, Lee and Eddis.*

J. V. W.

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P. C. 1910. *November* 11, 15. 1911. *February* 1.

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

[On appeal from the High Court of Judicature at Allahabad.]

*Parties—Parties to suits—Joint Hindu family—Managing members—Suit to recover debt due to members of family in family business—Power of managers to sue alone—Act No. XV of 1877 (Indian Limitation Act), section 22—Parties added after expiry of period of limitation.*

Where a joint family business has to be carried on in the interests of the joint family as a whole, the managing members may properly be entrusted with the power of making contracts, giving receipts, and compromising or discharging claims ordinarily incidental to the business; and where they are so entrusted and empowered they are entitled as the sole managers of the family business to make in their own names contracts in the course of that business, and to maintain suits brought to enforce those contracts without joining in the suit with them either as plaintiffs or defendants the other members of the family.

*Arunachala Pillai* v. *Vythialinga Mudaliyar* (1) approved. *K. P. Kanna Pisharody* v. *V. M. Narayanan Somayajipad* (2), *Ramsebuk* v. *Ramlall Koondoo* (3), *Imam-ud-din* v. *Liladhar* (4) and *Alagappa Chetti* v. *Vellian Chetti* (5) distinguished.

In this case the original plaintiffs were the managing members of a joint family business of money-lending, entrusted with and regularly exercising the power of doing everything necessary to carry on the business. In the course of such business they contracted in their own names with the defendants for a loan, and on the accounts a balance was struck between the parties on the 9th August, 1901. In a suit brought by the managing members on the 3rd June, 1904, and therefore within the period of limitation, to recover the amount due, the other members of the family were, on an objection by the defendants that the suit

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*Present* :—Lord MACNAGHTEN, Lord MORLEY, Lord ROBSON, Sir ARTHUR WILSON, and Mr. AMEER ALI.

(1) (1882) I. L. R., 6 Mad., 27.
(2) (1881) I. L. R., 3 Mad., 254.
(3) (1881) I. L. R., 6 Calc., 815
(4) (1892) I. L. R., 14 All., 524.
(5) (1894) I. L. R., 18 Mad., 33.

was improperly constituted, joined as plaintiffs on the 22nd August, 1904, after the period of limitation for the suit had expired, and the defence was set up that under section 22 of the Limitation Act (XV of 1877) the whole suit was barred.

*Held* (reversing the decision of the High Court) that the suit as originally brought was properly constituted; that the members of the family subsequently added were unnecessary parties; and that the suit was consequently not barred.

APPEAL from a judgement and decree (2nd February 1907) of the High Court at Allahabad, which reversed a judgement and decree (24th September 1904) of the Subordinate Judge of Ghazipur.

The facts of the case are stated in the judgement of their Lordships, and also in the report of the appeal before the High Court (SIR JOHN STANLEY C. J., and SIR WILLIAM BURKITT J.) which will be found in I. L. R., 29 All., 311, *Shamrathi Singh* v. *Kishan Prasad*.

The two issues alone material in this appeal were (1) Whether it is necessary to make other members of the family parties to the suit: if so, what persons have not been made parties, and what is the result of such omission?

(3) Is the plaintiff's suit barred by time against all the defendants, or the defendants aforesaid?

On the facts the Subordinate Judge found that the original plaintiffs with whom the contract sued on was entered into 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. He was of opinion therefore on the above issues that it was not necessary that all the members of the family should be made parties to the suit, or that it should be brought on behalf of them all; that the parties added as plaintiffs by the order of the 8th September, 1904, were unnecessary parties to whom the provisions of section 22 of the Limitation Act (XV of 1877) were not applicable; and that the suit was not barred against any of the defendants.

On appeal by the defendants that decision was reversed by the High Court and the suit was dismissed. The High Court judgement will be found at page 312 of the report above referred to.

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On this appeal:—

*DeGruyther K.C.* and *B. Dube* for the appellants contended that the contract of loan having been made with the original plaintiffs only, they alone were entitled to enforce it; and that they were entitled as the managing members of a joint Hindu family to maintain a suit for the recovery of a debt due to the joint family. In that view the suit was not barred by the law of limitation. Reference was made to the Limitation Act (XV of 1877) section 22, and schedule II, articles 57, 59, 64, 85, 115 and 120; and the following cases were cited and discussed, *Pragi Lal* v. *Maxwell* (1); *Kasturchand Bhiravdas* v. *Sagarmal Shrisam* (2); *Kattusheri Pisharette Kanna Pisharody* v. *Vallotil Marnakel Narayanan Somayajipad* (3); *Ramsebuk* v. *Ramlall Koondoo* (4); *Narayan Gop Habbu* v. *Pandurang Ganu* (5); *Gan Savant Bal Savant* v. *Narayan Dhond Savant* (6); *Ramayya* v. *Venkataratnam* (7); *Alagappa Chetti* v. *Vellian Chetti* (8); and *Arunachala Pillai* v. *Vythialinga Mudaliyar* (9). Reference was also made to Ameer Ali and Woodroffe's Civil Procedure Code (Act V of 1908), page 127. Under the particular circumstances of the case the added plaintiffs should in equity be considered parties to the suit from the date of its institution; and in no case ought the suit to have been wholly dismissed.

*Ross*, for the respondent, contended, mainly for the reasons given by the High Court, that the managing members of a joint Hindu family carrying on a joint family business were not entitled to maintain a suit in their own names against debtors of the family without joining with them either as plaintiffs or defendants all the other members of the family. He referred to *Hari Gopal* v. *Gokaldas Kushabashet* (10); *Angumuthu Pillai* v. *Kolandavelu Pillai* (11); Mayne's Hindu Law, 7th Ed., page 379 [LORD MERSEY referred to page 381]; *Ramsebuk* v. *Ramlall Koondoo* (12); and *Kalidas Kevaldas* v. *Nathu*

(1) (1885) I. L. R., 7 All., 284 (287).
(2) (1892) I. L. R., 17 Bom., 413 (416).
(3) (1881) I. L. R., 3 Mad., 234.
(4) (1881) I. L. R., 6 Calc., 815.
(5) (1881) I. L. R., 5 Bom., 685.
(6) (1883) I. L. R., 7 Bom., 467 (470).
(7) (1893) I. L. R., 17 Mad., 122 (126).
(8) (1894) I. L. R., 18 Mad. 33.
(9) (1882) I. L. R., 6 Mad., 27 (28).
(10) (1887) I. L. R., 12 Bom., 158).
(11) (1899) I. L. R., 23 Mad. 90 (104).
(12) (1881) I. L. R., 6 Calc., 815 (825).

*Bhagvan* (1). The suit was barred by section 22 of the Limitation Act, and had been rightly dismissed by the High Court.

The appellants were not called upon to reply.

1911. *February* 1*st*.—The judgement of their Lordships was delivered by

LORD ROBSON:—

The question to be determined in this appeal is whether or not the suit is barred by the Indian Limitation Act of 1877.

There is no doubt that when first brought, it was well within the statutory period of three years, but it is contended by the respondents that it was not then brought by all the proper and necessary plaintiffs, and that afterwards, when the record was amended in that respect, the statutory time had expired.

The suit was commenced by the first three plaintiffs on the record. They are the managing members of an undivided Hindu joint family governed by the Mitakshara law, and, as such managing members, they carry on the business of money-lenders together at Hanumanganj in the district of Ballia, as a firm, under the name and style of Manorath Bhagat Dhana Ram.

The other members of the joint family do not participate in the management of that business or "shop," as it is called, and the loan transactions out of which the claim arises were negotiated and concluded by the members of the said firm alone, with the first three defendants, who are also members of another undivided Hindu family.

The accounts between the parties began in 1895, and balances were periodically agreed between them until the 9th August, 1901, when the last balance was struck and the period of limitation began to run. On that date the defendants duly acknowledged the correctness of the balance then appearing in the plaintiffs' books, and executed a sarkhat or agreement admitting it to be due and payable by them. It is found by the learned Subordinate Judge that this agreement was made between the defendants and the first three plaintiffs, who accordingly brought their action for the balance in question on the 3rd June, 1904. The defendants objected that all the members of the family to which the plaintiffs belonged ought to be joined with them as

(1) (1883) I. L. R., 7 Bom., 217 (220).

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plaintiffs. On the 22nd August, 1904, the original plaintiffs, while denying that the other members of the family were necessary parties, and alleging themselves to be the proprietors and managers of the firm, yet with a view to removing the defendants' objection for what it was worth, prayed for leave to add the other members of the family as plaintiffs. Leave was accordingly given, and the amendment was made on the 8th September, 1904. By this time the three years allowed by Act XV of 1877, second schedule, article 64, had expired, and it became necessary to determine whether or not the additional plaintiffs were really necessary parties, because if not, the suit had always been properly constituted and the time under the statute stopped running on the 3rd June, 1904, within the three years.

The learned Subordinate Judge of Ghazipur decided in favour of the plaintiffs, but the High Court for the North-Western Provinces reversed his judgement. Their Lordships are of opinion that the judgement of the learned Subordinate Judge ought to be restored.

The Indian decisions as to the powers of the managing members of an undivided Hindu joint family are somewhat conflicting. It is, however, clear that where a business like money-lending has to be carried on in the interests of the family as a whole, the managing members may properly be entrusted with the power of making contracts, giving receipts and compromising or discharging claims ordinarily incidental to the business. Without a general power of that sort, it would be impossible for the business to be carried on at all, and there is no reason to doubt the correctness of the finding of the learned Subordinate Judge that the first three plaintiffs here were in fact entrusted with, and regularly exercised, such a power in regard to this money lending business. He finds in broad terms that all the business relating to the shop had been carried on in the names of the first three plaintiffs only, and that all law suits relating to the shop, or the family, had also been instituted in their names alone.

Is there any principle of law, or any custom applicable to a case like this, according to which the managing members of a Hindu joint family intrusted with the management of a business must be held incompetent to enforce at law the ordinary business

contracts they are entitled to make or discharge in their own names? The defendant is, of course, entitled to insist on all the persons with whom he expressly contracted being made parties to the suit, and that was done in the action as originally framed in this case. There were no other parties to the contract of the 9th August, 1901, than the respondents and the first three plaintiffs. The respondents are demanding, however, that persons who are incompetent to inte fere in the business of the contract, or to give a receipt under it, and are merely interested in its profits shall be treated as parties necessary to its enforcement. The High Court thought there was much to be said in favour of the view taken by the Court below, but considered the matter concluded by authority. They cited the case of *K. P. Kanna Pisharody* v. *V.M. Narayanan Somayajipad* (1) which was a case turning on the co-ownership of land. The co-owners were an association of individuals of which only some brought the action while others supported the defendants. Knight, C.J., held that all the co-owners in such a case must join and that they could not invest the managers of their property with the right to sue in their own names or in a representative capacity. Their Lordships think that this proposition, thus broadly stated as to co-ownership, cannot be applied to the managing members of a business carried on for an undivided Hindu joint family. It was not so applied in the later case of *Arunachala Pillai* v. *Vythialinga Mudaliyar* (2), where it was stated that the managing member of an undivided Hindu family, suing as such, is entitled to bring a suit to establish a right belonging to the family without making the other members of the family parties to the suit.

Stress was laid by the High Court on the judgement in *Ramsebuk* v. *Ramlall Koondoo*, (3). In that case a business was carried on for the benefit of a Mitakshara family by a firm consisting of four members of the family. The action in question was brought by two only of the partners, and the other two were not added until after the period of limitation had expired. The Court held that the plaintiffs must fail because all the co-contractors had not been added as plaintiffs. Garth, C.J., says, p.

(1) (1881) I. L. R., 3 Mad., 234. (2) (1882) I. L. R., 6 Mad., 27.
(3) (1881) I. L. R., 6 Calc., 815.

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824:—"If in this case it had been found in the Court below as a fact that the contract was made *between the defendant and the two original plaintiffs only* there would be no difficulty in deciding in their favour, because the joinder of the other two plaintiffs would only have been a *misjoinder*, which, by section 31 of the Code of Civil Procedure, is never now fatal to a suit." Again (p. 825) the learned Chief Justice says:—"The lower Court has found in this case that all the four plaintiffs were partners in the concern, and that the defendants contracted with all jointly." It is to be observed that there were other members of the family who had an equal family interest in the profits of the business, but it was not suggested that they should be joined as plaintiffs or that they were to be treated as partners in the firm of managing members. In the present case, however, the defendants were originally sued by all the partners or persons with whom they had made their contract, and therefore they cannot avail themselves of *Ramsebuk's* case as an authority in their favour.

The same observations apply to the case of *Imam-ud-din* v. *Liladhar* (1). There the decision simply was that, except in the case of an assignment by the other surviving partner, it is not competent to one only of two or more surviving partners to sue for a debt due to the firm.

The decision in the case of *Alagappa Chetti* v. *Vellian Chetti* (2), cited by the respondents, may be supported on the ground that the single plaintiff in that case was not shown to be the managing member of the family or to be the only partner of the business with which the litigation was concerned.

Their Lordships think, however, that the proposition there laid down to the effect that the manager cannot sue without joining all those *interested* with him, if literally construed, goes too far.

In the opinion of their Lordships, the original plaintiffs in this case were entitled, as the sole managers of the family business, to make in their own names, the contracts which gave rise to the claim, and that they properly sued on such contracts without joining the other members of the family.

(1) (1892) I. L. R., 14 All., 524. (2) (1894) I.L.R., 18 Mad., 33.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed; that the decree of the High Court should be reversed with costs, and that of the Subordinate Judge restored.

The respondents will pay the costs of the appeal.

*Appeal allowed.*

Solicitors for the appellants:—*Barrow, Rogers & Nevill.*

Solicitors for the respondents:—*T. L. Wilson & Co.*

J. V. W.

## APPELLATE CIVIL.



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

SURAJ DIN (JUDGEMENT-DEBTOR) *v.* MAHABIR PRASAD (PURCHASER OF DECREE).*

*Civil Procedure Code* (1882), *sections* 341 *and* 349—*Execution of decree—Arrest debtor - Discharge pending an insolvency petition—Re-arrest in execution of the same decree—Act No. XV of* 1877 (*Indian Limitation Act*), *schedule II, article* 179—*Application in accordance with law.*

Where a judgement-debtor who has been arrested and sent to jail in execution of a decree obtains an *interim* release under section 349 of the Code of Civil Procedure, 1882, such a release is not a discharge under section 341 of the Code and does not exempt the judgement-debtor from liability to be re-arrested in execution of the same decree. An application, therefore, in such circumstances, for execution of the decree by re-arrest of the judgement-debtor is one in accordance with law and saves limitation. *Shamji Deokaran* v. *Poonja Jairam* (1) followed. *Secretary of State for India* v. *Judah* (2) dissented from.

THIS was an appeal under section 10 of the Letters Patent from a judgement of KARAMAT HUSAIN J. The facts of the case appear from the judgement under appeal, which was as follows:—

"The decree-holder in this case obtained the decree on the 19th November, 1904. The first application was made on the 6th February, 1905. The prayer was to have the judgement-debtor arrested, but that application was struck off for default. The second application for execution was made on the 2nd July, 1905, and the judgement-debtor was arrested on the 3rd of July and sent to jail. The judgement-debtor applied to be declared an insolvent, and by the order of the District Judge of the 28th July, 1905, an interim order was passed by the District Judge for the release of the judgement-debtor. The application of the judgement-debtor for a declaration that he was an insolvent

* Appeal No. 34 of 1910 under section 10 of the Letters Patent.

(1) (1902) I. L. R., 26 Bom., 652. (2) (1886) I. L. R., 12 Calc., 652.