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plaintiffs had sued as managers, and in some of the cases at all events it was impossible to presume that the managers were before the Court. Consequently we disposed of the appeals on another ground.

I agree with the order proposed by the learned Chief Justice in this case.

BY THE COURT.—The order of the Court is that the appeal be dismissed, but we make no order as to the costs in this Court. We extend the time for payment for six months from this date.

Appeal dismissed.

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May, 27.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Banerji, Mr. Justice Tudball and Mr. Justice Chamier.

MADAN LAL (PLAINTIFF) *v.* KISHAN SINGH AND OTHERS (DEFENDANTS).*

Hindu law—Joint Hindu family—Mortgage—Mortgage for benefit of joint family —Suit for sale by managing member alone—Parties—Civil Procedure Code (1908), *order XXXIV, rule* 1.

Where in a suit for sale on a mortgage executed in favour of the manager of a joint Hindu family the plaintiff was the then managing member of the family, it was *held* that he was entitled in that capacity to maintain the suit and that it would not fail by reason of the non-joinder of the plaintiff's son, who was joint with him. *Hori Lal* v. *Munman Kunwar* (1) referred to.

This was a suit on foot of two mortgage bonds bearing date the 11th of July, 1877, and the 8th of August, 1884, respectively. They were executed by one Tori Singh in favour of Ram Prasad. The present suit was by Madan Lal, grandson of Ram Prasad. The plaintiff came into court alleging himself to be the surviving member of the family. He did not join a son of his, aged four years, in the suit with him. His suit was dismissed in the lower court as he had failed to join the son with him. The plaintiff pleaded that he was suing as head of his family and in the alternative sought leave to amend the plaint to that effect.

The Hon'ble Dr. *Sundar Lal* (Munshi *Girdhari Lal Agarwala* with him), for appellant :—

The head of a family was entitled to maintain a suit like that in his own name as manager. It was an act he was doing for the benefit of the family. Nor need he state in the plaint that he is suing as manager, provided that he makes it clear that he is suing in that capacity. Here he made an application to that effect.

* First Appeal no. 91 of 1911, from a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 23rd February, 1911.

(1) *Supra* p. 549.

That the other members are not necessary parties is clear from the fact that it is possible to bring them on the record even if a fresh suit brought against them would be barred; *Pateshri Partap Narain Singh* v. *Rudra Narain Singh* (1). In that case it was held that the property had ceased to be impartible and both brothers were equally entitled. The younger brother was made a party by the High Court. Again, a co-mortgagee could bring a suit himself to recover the whole amount. At most the others might be made defendants, but he was competent to maintain the suit. According to *Barber Maran* v. *Ramana Goundan* (2) he can give a valid discharge.

[Munshi *Binode Behari*, for the respondents, pointed out that this court had held otherwise in *Ram Chandra* v. *Rajjan Lal* (3).]

To take the first point—the most recent case was *Ramayya* v. *Venkataratnam* (4). In *Adaikkalam Chetti* v. *Marimuthu* (5) and *Nathi Lal* v. *Lalu* (6) the other members were made defendants by the High Court. There was a large body of cases where suits were brought by the managing member alone or against him alone; *Husein Begam* v. *Zia-ul-nisa Begam* (7), *Daulat Ram* v. *Mehr Chand* (8), *Thakurmani Singh* v. *Dai Rani Koeri* (9), *Ram Narain Lal* v. *Bhawani Prasad* (10). The case of *Ghulam Kadir Khan* v. *Mustakim Khan* (11) was wrongly decided. It followed *Matadin Kasodhan* v. *Kazim Husain* (12). The point there was that all persons must be brought on the record to represent the entire property—as the whole of it was sought to be sold. In *Bhawani Prasad* v. *Kallu* (13) the suit was by a son praying that the decree was not binding on him as he was not a party. In old times the manager represented the entire family—later the tendency came in of making every one a party. It was only by reason of difficulties that might arise if a member was not made a party that people tried to implead everyone There was no change of principle. Another case on the lines of 3 All. was *Phul Chand* v. *Lachmi Chand* (14).

(1) (1904) I. L. R., 26 All., 528.
(2) (1897) I. L. R., 20 Mad., 461.
(3) (1909) I. L. R., 32 All., 164.
(4) (1893) I. L. R., 17 Mad., 122.
(5) (1899) I. L. R., 22 Mad., 326.
(6) (1912) 9 A. L. J, 410.
(7) (1882) I. L. R., 6 Bom., 467.
(8) (1887) I. L. R., 15 Calc., 70.
(9) (1906) I. L. R., 33 Calc., 1079.
(10) (1881) I. L. R., 3 All., 443.
(11) (1895) I. L. R., 18 All., 109.
(12) (1891) I. L. R. 13 All., 432.
(13) (1895) I. L. R., 17 All., 537.
(14) (1882) I. L. R., 4 All., 486.

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Munshi *Benode Behari*, for the respondents :—

The frame of the suit was governed by the Code of Civil Procedure. The question was if a managing member could sue on behalf of all the others. It would involve considerable difficulties. *Kalidas Kevaldas* v. *Nathu Bhagvan* (1). A debtor would not be satisfied if a managing member gave him a discharge; he would want the others to join. If one of them was inaccessible, he could say that the manager had no right to give a full discharge and he could reopen thematter. In case the mortgagor wished to pay out of court he could get a discharge from the manager because the son could not ask for accounts. In *Dwarka Nath Mitter* v. *Tara Prosunna Roy* (2) where a managing member brought a suit without making a member a party, it was held that the suit was not maintainable.

The following cases were referred to *Angamuthu Pillai* v. *Kolandavelu Pillai* (3), *Alagappa Chetti* v. *Vellian Chetti* (4), *Gopal* v. *Macnaghten* (5).

The Hon'ble Dr. *Sundar Lal*, in reply :—

Most of the cases were discussed in *Kishan Pershad* v. *Har Narain* (6).

18 Mad. was also the case of a firm, and 7 Calc. was the case of co-parceners. If a member could be sued through the head of the family and all the property was sold—he could dispute the sale only on the ground of immorality—there was no reason why the manager should not sue for the benefit of the family. He referred to *Krishnama* v. *Perumal* (7), *Jeo Lal Singh* v. *Gunga Pershad* (8), *Daulat Ram* v. *Mehr Chand* (9), *Sheo Pershad Singh* v. *Rajkumar Lal* (10), *Baldeo Sonar* v. *Mobarak Ali Khan* (11), *Deva Singh* v. *Ram Manohar* (12), *Phul Chand* v. *Lachmi Chand* (13), *Gan Savant Bal Savant* v. *Narayan Dhond Savant* (14), *Bhana* v. *Chindhu* (15) and *Kunjan Chetti* v. *Sidda Pillai* (16).

(1) (1883) I. L. R., 7 Bom., 217.
(2) (1889) I. L. R., 17 Calc., 160.
(3) (1899) I. L. R., 23 Mad., 190.
(4) (1894) I. L. R., 18 Mad., 33.
(5) (1881) I. L. R., 7 Calc, 751.
(6) (1911) I. L. R., 33 All., 272.
(7) (1884) I. L. R., 8 Mad., 388.
(8) (1884) I. L. R., 10 Calc., 996.
(9) (1887) I. L. R., 15 Calc., 70.
(10) (1892) I. L. R., 20 Calc., 453.
(11) (1902) I. L. R., 29 Calc., 588.
(12) (1880) I. L. R., 2 All., 746.
(13) (1882) I. L. R., 4 All., 486.
(14) (1883) I. L. R., 7 Bom., 467.
(15) (1896) I. L. R., 21 Bom., 616.
(16) (1898) I. L. R., 22 Mad., 461.

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RICHARDS, C. J.—This appeal arises out of a suit to realize the amount of a mortgage, dated the 11th August, 1884. It was pleaded by way of defence, amongst other things, that the plaintiff and his minor son, Bisheshar Dayal, were a joint Hindu family, and that the suit could not be maintained because the mortgage was of family property and the son was not made a party. Plaintiff urged against this plea that he was manager and represented the family. Plaintiff also asked that the plaint might be amended by stating therein that he sued as manager. The Court below refused to amend the plaint and dismissed the suit on the ground that the son was necessary a party to the suit.

The appeal has been referred to this Bench because of the conflict of judicial decisions on the question.

Apart from authority, I can see no reason why the son should be a necessary party to the suit. It must be assumed for the purpose of this appeal that the plaintiff is the manager of the family. If, before the suit was instituted, the owners of the equity of redemption had been ready and willing to pay off the mortgage, I think it is absolutely clear that the plaintiff as manager could receive the mortgage money and give the persons paying off the money a good discharge, and I can see no reason why they should require the presence of any other party.

Order XXXIV, rule 1, of the Code of Civil Procedure, no doubt, requires that persons interested in the mortgage security should be parties, but I think, in a case like the present, the son is virtually a party through the manager, and that order XXXIV, rule 1, is substantially complied with.

The same question in principle arose in Second Appeal No. 361 of 1911 (1), which was argued before this Bench. In my judgement in that case I gave my reasons for holding that the manager of a joint family can represent the family. I would allow the appeal and remand the suit.

BANERJI, J.—The point raised in this appeal has practically been decided in Second Appeal No. 361 of 1911 (1), in which judgement has this day been delivered.

In this case the plaintiff omitted to join with him as plaintiff his minor son, who is four years old. For this omission the suit has been dismissed. It is manifest from the plaint that the

(1) *Supra* p. 549.

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debt which the plaintiff seeks to recover is alleged to be a debt due to the joint family of which he and his minor son are members. The mortgages which form the basis of the claim are in favour of Ram Prasad, the grandfather of the plaintiff and the great-grandfather of his son. This is recited in the plaint. At an early stage of the suit the plaintiff stated to the Court that he was suing in his capacity as manager of the joint family and applied for amendment of the plaint. The Court, in my opinion, improperly rejected this application. The defendants clearly had notice that the plaintiff was suing as manager. I have in my judgement in S. A. No. 361 stated my reasons for holding that where a suit is brought by the manager of a joint Hindu family, the other members of the family must be deemed to be parties to the suit through him, and the omission of the names of those members from the array of parties would not be a defect fatal to the suit. Of course, if in a suit like this the other members wish to join or apply to be added as parties, the Court should never refuse to add them, but the suit ought not, in any event, to be dismissed if, in fact, it has been instituted by the manager of the joint family for the recovery of debt due to the family. As the manager is competent to give a full discharge to the debtor, the latter can have no reason to complain of the omission of the persons whom the manager represents. In this respect the case of a joint Hindu family is different from that of other joint creditors. The matter is in my opinion concluded by the principle of the decision of their Lordships of the Privy Council in *Kishan Prasad* v. *Har Narain Singh* (1). I would allow the appeal, set aside the decree of the court below, and remand the case to that court for trial on the merits.

TUDBALL, J.—This appeal arises out of a suit for sale on a mortgage against the heirs of the original mortgagor and certain subsequent transferees. It has been dismissed on a preliminary point, the lower court having held that the plaintiff alone is not competent to maintain the suit.

The original mortgagee was Lala Ram Prasad, the plaintiff's paternal grandfather, and the plaintiff's case as disclosed in the plaint was that his grandfather, his father, his uncle and himself formed a joint Hindu family and that the three former having

(1) (1911) I. L. R., 33 All., 272.

died, he was the sole owner of the mortgage debt by the right of survivorship and entitled to sue. But it is an admitted fact that the plaintiff has an infant son, who is joint with him.

Before the first date fixed for the case the plaintiff applied to the court to be allowed to amend his plaint by adding thereto that he was suing as manager of the joint family (consisting of himself and his son). The court below, without passing any orders on this application, dismissed the suit, holding that the amendment could not improve the position of the plaintiff, because the manager of a Hindu family cannot sue without joining those interested with him. The decision was based on the ruling of this Court in the case of *Shamrathi* v. *Kishan Prasad* (1).

This decision has since been overruled by their Lordships of the Privy Council. In Second Appeal No. 361 of 1911 (2) this Bench has fully discussed the right of the manager of a joint Hindu family to represent the family, and have held that he can sue and be sued as such, so that the decree, under certain circumstances, may be binding on the other co-parceners. It is unnecessary to repeat what has already been said in the judgements in that case.

In my opinion the plaintiff ought to have been allowed to amend his plaint, and the suit as amended is maintainable. Of course, it is open to the defendant to plead that he is not the manager, though in the circumstances of the case that appears to be a hopeless plea.

I would, therefore, allow the appeal and remand the suit to the lower court with orders to allow the plaint to be amended and to decide the suit on the merits.

CHAMIER, J.—I agree that the court below ought to have allowed the plaint to be amended. The question for decision in this appeal appears to me to be whether the manager of a joint Hindu family, *suing as such*, can maintain a suit alone for the recovery of a mortgage debt due to the family. For the reasons which I have given in my judgement in Second Appeal No. 361 of 1911 (2) I am of opinion that he can. I agree in the order proposed by the learned Chief Justice.

BY THE COURT.—The order of the Court is that we allow the appeal, set aside the decree of the court below and remand the

(1) (1907) I. L. R., 29 All., 311. (2) *Supra* p. 549.

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case to that court with directions to readmit the suit under its original number in the register and to proceed to try it on the merits after allowing the amendment of the plaint as prayed for by the plaintiff. Costs here and heretofore will abide the result.

Appeal allowed. Cause remanded.