

P. C.*
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March 15.
April 2.

NAM NARAIN SINGH (PLAINTIFF) v. RAGHU NATH
SAHAI (DEFENDANT).

[On appeal from the High Court at Calcutta.]

Agent's authority to sue on behalf of his principal—Dismissal of suit brought by agent in his principal's name—Amendment.

A Court in which a suit is brought on behalf of one person, through the agency of another, is entitled to inquire as to the agent's authority.

A suit for arrears of rent was brought by an agent, professing to act under authority from his principal. The plaintiff, after instituting the suit in his own name as agent, obtained an order from the Court granting him leave to amend the plaint by substituting the name of his principal as plaintiff, suing through him, an amendment which the defendant resisted, disputing the authority of the agent—*Held*, that the Court in allowing it did not decide that the agent had authority; that remained to be proved; and, as it was not proved, the suit failed.

APPEAL from a decree (1st February 1888) of the High Court affirming a decree (30th June 1886) of the Deputy Collector, Hazáribágh.

The appellant was the zemindar of Ramgurb, in the Hazáribágh district. The respondent, a minor, represented in this suit by his mother and guardian, Mussamut Bhikkan Koeri, held a village, Atka in that zemindari, under a mokurrari pottah. The suit was for Rs. 13,574 for rent for seven years, from Sumbut 1934 to 1941 (1877 to 1884), and was instituted on the 17th March 1885, under the provisions of Bengal Act I of 1879, by Sheo Narain Sett, as tehsildar and am-mukhtear of the zemindar, the appellant.

The question now raised related to the authority of Sheo Narain Sett to sue, he having amended his plaint, with the leave of the Court, the Deputy Collector, by substituting the name of his principal, the zemindar, for his own, as plaintiff.

The suit having been heard, both the Courts below, Original and Appellate, held that the objection taken by the defendant to the suit based on the ground that Sheo Narain Sett had no authority to sue in the name of Nam Narain Singh was a good defence. The Deputy Collector stated in his judgment that the plaintiff was

* *Present*: LORD MACNACHTEN, LORD HANNEN, SIR R. COUCE, and LORD SHAND.

repeatedly called upon to produce the zemindar's deed appointing him, but he had failed to do so from the beginning to the end. An appeal having been preferred in the name of Nam Narain Singh to the High Court, a Divisional Bench (NORRIS and BEVERLEY, JJ.) was of opinion:—*First*, as regarded the arrears for the period prior to Sumbut 1941, that the defendant's objection was sufficient to require the filing of the authority under which the tehsildar was acting, and as to so much the lower Court had rightly dismissed the claim on the ground that no such authority had been filed; *secondly* that, as regarded the rent due since that date, Sheo Narain Sett required special permission, which was not forthcoming, to sue the respondent, who was the heir of Birt Lal, the late mokurridar. This special permission was required because Sheo Narain Sett was prohibited, as had been shown, from recognizing any one as the heir of a deceased ilakadar without the zemindar's permission. This he had alleged himself to have received under the seal and signature of the zemindar, but the document had not been produced. The dismissal of the suit was accordingly affirmed.

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On this appeal—

Mr. *Graham*, Q.C., and Mr. *J. H. A. Branson*, for the appellant, argued that Sheo Narain Sett, having been admitted to be the appellant's tehsildar, would have been entitled, under the provisions of Bengal Act I of 1879, to maintain the suit, even if no amendment as to the name of the plaintiff had been made. After, however, the amendment had been made, no question could arise as to his right to sue. It had become the suit of the zemindar, who was now the appellant, and was not open to any objection founded on the terms of the sunnud, which, in prohibiting the agent from recognizing an heir of a deceased ilakadar without the zemindar's permission, did not apply to a suit of this kind. At all events, with regard to the Court's order of amendment, from which no appeal had been preferred, that was in itself conclusive, in effect, to maintain the right of the agent to use his principal's name in the suit. They referred to *Madho Prakash Singh v. Murli Manohar* (1), and *Huro Prosad Roy v. Kali Prosad*

1892 *Roy* (1), as to the application of the Code of Civil Procedure in revenue suits.

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The respondent did not appear.

Their Lordships' judgment was afterwards (2nd April) delivered by—

LORD HANNEN.—This suit was originally brought in the Court of the Deputy Collector of Hazáribágh by Sheo Narain Sett in his own name, but professing to act as the tehsildar and general agent of Babu Nam Narain Singh, in respect of a property called Raj Ramgurb, to recover arrears of rent alleged to be due from the defendant as occupier of a portion of that property.

Amongst other defences the defendant alleged that the suit was not brought in the name of Babu Nam Narain Singh and on his behalf, and that the then plaintiff, Sheo Narain Sett, had no authority in his sunnud to sue for arrears.

The plaintiff, Sheo Narain Sett, for some reason, applied to amend his plaint by substituting therein for his own name the name of his alleged principal, Nam Narain Singh, as plaintiff who would presumably be entitled to sue for arrears of rent not barred by limitation. This application to amend was resisted by the defendant, but on the 16th April 1886 the Deputy Collector of Hazáribágh, before whom the case was pending, allowed the proposed amendment, thinking that the 27th section of the Civil Procedure Code, which authorizes such an amendment, was applicable to suits under the Rent Act.

There was no appeal from this order. What was done under it does not clearly appear, but in the final decree pronounced by the Deputy Collector the suit is described as one in which Nam Narain Singh is the plaintiff. It must therefore be assumed that the substitution of the name of Nam Narain Singh for that of Sheo Narain Sett was properly effected.

When the case came on for hearing before the Deputy Collector, a preliminary objection was taken by the defendant that Sheo Narain Sett, who had instituted the suit and obtained the amendment, had not shown that he was the tehsildar or agent of

Nam Narain Singh, and authorized to use his name as plaintiff. The Deputy Collector considered this objection valid, and dismissed the suit. His decree has been affirmed by the judgment of the High Court, and from this judgment the present appeal is brought in the name of Nam Narain Singh. The respondent has not appeared on this appeal.

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The main argument on which the appellant's case is based is that the order amending the plaint was conclusive between the parties as to the right to maintain the suit in the name of Nam Narain Singh.

Their Lordships cannot adopt this view. The position of the parties is not different after the order for the amendment of the plaint from what it would have been if the suit had been originally commenced by Sheo Narain Sett in the name of Nam Narain Singh. All that the Court did by allowing the amendment was to correct a supposed mistake made by Sheo Narain Sett in the institution of the suit. After that correction the suit would proceed as though it had been originally brought as corrected. The Deputy Collector did not, by allowing the amendment, decide that Sheo Narain Sett had authority to institute a suit in Nam Narain Singh's name. That, if questioned, would remain to be proved.

As reconstituted, the suit purported to be brought by Nam Narain Singh *through* Sheo Narain Sett, his tehsildar and general agent. In all other respects the pleadings and issues raised remained unaltered, and the parties proceeded to offer proof of their respective cases. Upon the hearing the defendant took the preliminary objection already mentioned, that it was not proved that the suit was brought under any authority given by Nam Narain Singh.

It appears to their Lordships clear that a Court whose aid is invoked on behalf of one person through the agency of another is entitled in some form or other to inquire whether the alleged agent really had authority to bring the suit. It may be necessary to do so for the protection of the person sued. He would at least be exposed to the danger of being sued again by the principal if the agency did not exist.

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In the present case Sheo Narain Sett, in his original plaint, alleged that he had authority in writing to bring suits in respect of arrears. If this was the fact, it was remarkable that he thought it necessary to amend the plaint; and further, though there was evidence that Nam Narain Singh knew that some legal proceedings were pending for recovery of rent, it was admitted by Sheo Narain Sett that he did not inform Nam Narain Singh that his name had been used as plaintiff. But if, as there seemed reason to surmise, Sheo Narain Sett had not a general authority to sue for arrears of rent, but only some limited authority, if any, it was within the defendant's right to require the production of the alleged authority. But this production, though called for, and, as stated in the minutes of the Court, promised on the part of the plaintiff, was never made. The alleged plaintiff (Nam Narain Singh), though summoned as a witness on behalf of the defendant, never attended to give evidence. Sheo Narain Sett was also subpoenaed by the defendant, and he stated that he had been appointed Nam Narain Singh's tehsildar by deed; that he had been authorized to sue for arrears accruing before his appointment as tehsildar; that his authority to sue for arrears in this respect was recorded in his deed of appointment, and that that deed of appointment was filed in the Court of the Judicial Commissioner at Ranchi. No reason was, or has been now, assigned why this deed of appointment, or a copy of it, has not been produced, and, as the Deputy Collector pointed out, it was indispensably necessary that the authority should be submitted to the inspection of the Court, in order to see whether it was an authority to sue or only to collect rents, and to decide whether Sheo Narain Sett had *any* authority to bring the suit in the name of his alleged principal. It is clear from Sheo Narain Sett's evidence that he never informed Nam Narain Singh that an action had been brought in his name, and though Sheo Narain Sett stated that he had special permission, under Nam Narain Singh's seal and signature, to bring the original suit, this document was not produced, and no legal evidence of its contents or excusing its non-production was given. Their Lordships therefore agree with the Judges of the High Court that the lower Court was justified in dismissing the suit.

It was argued that the judgment appealed from is inconsistent, inasmuch as it condemns the plaintiff, Nam Narain Singh, in costs, while holding that, the suit was rightly dismissed on the ground of want of proof of Sheo Narain Sett's authority to bring it. This objection, if valid, applied to the judgment of the lower Court, but it was not taken as one of the grounds of appeal from the lower Court, and it does not appear that the attention of the High Court was called to this point. But the appeal being brought by Nam Narain Singh, he was properly condemned in costs for appealing against a judgment which, upon the materials before the Court, was rightly pronounced. His proper course would have been to prove that he had, in fact, given authority to Sheo Narain Sett to bring the suit in his name, but he made no application to be allowed to supply this proof, but simply appealed. By so doing he subjected himself to the jurisdiction of the Court to condemn him in costs.

Their Lordships will humbly advise Her Majesty to dismiss the present appeal.

Appeal dismissed.

Solicitors for the appellant: *Messrs. A. H. Arnould & Son.*

C. B.

PROSUNNO KUMAR SANYAL AND ANOTHER (PLAINTIFFS) *v.* KALI
DAS SANYAL AND OTHERS (DEFENDANTS).

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May 14.

[On appeal from the High Court at Calcutta.]

Execution of Decree—Suit to have an execution sale of land set aside—Civil Procedure Code (Act XIV of 1882), s. 244—Parties to the suit—Fraud, allegation of.

Where questions are raised between the parties to a decree relating to its execution, discharge, or satisfaction, the fact that the purchaser at a judicial sale, who is no party to the decree of which the execution is in question, is interested and concerned in the result has never been held to prevent the application of section 244 of the Civil Procedure Code, limiting the disposal of these matters to the Court executing the decree.

The plaintiffs in a suit to have the judicial sale of a zemindari set aside alleged that the decree-holder, in part satisfaction of his decree, had received,

Present: LORDS HOBHOUSE, MACNAGHTEN, HANNEN and SIR R. COUCH.