

clause (ii), which is in these terms: "In suits for maintenance and annuities or other sums payable periodically, according to the value of the subject matter of the suit, and such value shall be deemed to be ten times the amount claimed as payable for one year." In the present suit the plaintiff has in clause (a) of the reliefs prayed for in the plaint asked for a declaration that she and her legal representatives are entitled, generation after generation, to receive from the defendant and from their property Rs. 100 a month. This is a claim for a sum, other than maintenance or annuity, which is payable periodically. In a case like this, if clause (ii) is applicable, the court fee is to be paid on ten times the amount claimed to be payable for one year. In our opinion this is a case to which clause (ii) of section 7 fully applies. The claim is, as stated above, for a declaration of right to a periodical payment and therefore court fee is to be paid on this part of the claim on ten times the amount claimed to be payable for one year. The sum of Rs. 100 a month is claimed as payable and therefore for one year the amount payable is Rs. 1,200. Court fee is payable on ten times that amount, namely, Rs. 12,000.

We allow the appellant three months to make good the deficiency in court fee on the memorandum of appeal presented in this Court and on the plaint filed in the court below.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

KUNJ MAN AND ANOTHER (DEFENDANTS) v. JAGAN NATH (PLAINTIFF)*
Civil Procedure Code (1909), section 11, Explanation VI—Res judicata—Joint Hindu family—First suit by managing member with another member as a pro forma defendant—Second suit by latter member.

The managing member of a joint Hindu family brought a suit in respect of a house which formed part of the family property, asking for an injunction to restrain the defendant from interfering with it. A brother of the plaintiff who was a member of the joint family was made a *pro forma* defendant to the suit. This suit was dismissed. Thereafter the brother filed a second suit asking for the same relief in respect of the same house from the same defendant. *Held* that this second suit was barred by the principle of *res judicata*.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The facts of

Appeal No. 70 of 1918, under section 10 of the Letters Patent.

1920

SHARZADI
 BEGAM
 v.
 MAHBUB ALI
 SHAH.

1920
 February, 27.

1920

KUNJ MAN
v.
JAGAN NATH.

the case are set forth in the judgment under appeal, which was as follows:—

“This second appeal arises out of a suit brought by one Chaube Jagan Nath. In the plaint the plaintiff arrayed as defendants Chaube Kunj Man, Hulas Rai, Rameshar and others. The suit was for a perpetual injunction restraining the defendant from interfering with the plaintiff's possession over a certain house, demolishing the walls, causing injury, etc. A written statement was filed by Chaube Kunj Man, and one of the pleas raised in the written statement was that the claim was barred by section 11 of the Code of Civil Procedure and the principle of *res judicata*. The court of first instance held that the suit could not be maintained, and dismissed it with costs. The main point considered by that court was whether the plaintiff could maintain his suit in face of a decree which stood against Balmakund, the manager of a joint Hindu family. The learned Munsif considered himself bound by the principle laid down in *Nathi v. Khachera* (1). The lower appellate court agreed with the learned Munsif, considered the suit barred and dismissed the appeal. The plaintiff has come here in second appeal and contests the plea that the suit is barred by the rule of *res judicata*. I was referred to the case of *Kalishunkur Doss v. Gopal Chunder Dutt* (2). The question which has to be decided is whether explanation VI of section 11 of the Code of Civil Procedure does apply to the present case or not. Was Balmakund litigating *bona fide* in respect of a private right claimed in common for himself and others? Jagan Nath was *pro forma* defendant, and the contention is that by this explanation he must be deemed to have been fighting under Balmakund in the first suit. It appears to me that this explanation has no reference to a case like this. The right intended and contemplated would be a right claimed by Balmakund in common for himself and others not expressly named in the suit, as in the case of *Jaimangal Deo v. Bed Saran Kunwari* (3). I allow the appeal and set aside the decrees of the lower courts, and as those courts disposed of the suit on a preliminary point and I have reversed their decrees, I remand

(1) (1919) 11 A. L. J., 844.

(2) (1880) I. L. R., 6 Calc., 49.

(3) (1911) I. L. R., 33 All., 493.

the case through the lower appellate court to the court of first instance with directions to readmit the suit under its original number in the register of civil suits and proceed to determine it according to law. Costs will abide the event."

On this appeal—

The Hon'ble Munshi *Narain Prasad Ashthana*, for the appellants.

Babu *Saila Nath Mukerji*, for the respondent.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—There are certain facts which are necessary to explain the decision in this suit. According to the plaintiff respondent's own story there was a certain house which was acquired by a joint family of which he was a member. It became joint family property. The defendants appellants before us, according to him, began to disturb the plaintiff and the joint family in possession of the property and began to do various improper acts in respect to it. He accordingly brought this suit for an injunction to restrain them. He also admitted that his brother Balmakund was the managing member of the joint family, that this brother Balmakund had brought a former suit in respect to this very house against the very same defendants on the very same cause of action, which suit had been dismissed. He admitted that prior to the institution of that suit his brother Balmakund consulted him as to its institution and he gave his consent thereto. Both the court of first instance and the lower appellate court have on these facts held that the present suit is barred by the principle of *res judicata*, in that the former suit was brought by the managing member of the family with the present plaintiff's consent and knowledge and on his behalf. A second appeal was preferred to this Court. A single Judge who heard it reversed the decision of the lower appellate court and remanded the suit for decision on its merits to the court of first instance. The learned Judge held that Explanation VI of section 11 of the Code of Civil Procedure did not apply. We think that on the facts admitted by the plaintiff in his plaint and in his statement in court the present suit is clearly barred by the rule of *res judicata*. Actually as a matter of fact, though he was arrayed as a *pro forma* defendant in the former suit, the present plaintiff was a plaintiff to that suit. Though in his plaint

1920

KUNJ MAN
v.
JAGAN NATH.

1920

KUNJ MAN
v.
JAGAN NATH.

Balmakund did not say that he sued in his capacity as managing member of the family, still the plaintiff has had to admit in the present suit that he actually did sue in that capacity. If the present suit were not barred, there would in the case of a joint family be endless litigation, as no other member of the family would be bound by the decision arrived at in the suit brought by the managing member on behalf of the family. We think the question is not open even to argument. We allow the appeal, set aside the decision of this Court, and restore the decree of the court below. The appellants will have their costs in this Court.

Appeal allowed.

1920
March, 3.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq
LILAWATI KUNWAR (PLAINTIFF) v. CHOTE SINGH AND OTHERS
(DEFENDANTS)*

Civil Procedure Code (1908), order XX, rule 2—Judgment—Judgment written by the Judge who heard the case after he had ceased to be a judge of the court in which the case was tried, and pronounced by his successors in office.

A judge may pronounce a judgment written but not pronounced by his predecessor in office, and this notwithstanding that at the time the judgment was written the judge who wrote it had ceased to be the judge of the court in which the case was tried. *Basant Bihari Ghoshal v. The Secretary of State for India in Council* (1) and *Satyendra Nath Roy Chaudhuri v. Kastura Kumari Ghatwalia* (2) followed.

THE plaintiff in this case sued as the widow of one Bijaipal Singh to recover a large amount of immovable property with mesne profits. The suit was heard by Mr. Piari Lal, who was at the time officiating as first additional Subordinate Judge of Aligarh. Very shortly after the arguments in the case had been concluded, on or about the 22nd of December, 1916, Mr. Piari Lal ceased to officiate as Subordinate Judge and reverted to his substantive post of Munsif. He, however, wrote a judgment in the suit, which was delivered on the 24th of January, 1917, by Mr. Shams-ud-din Khan, who was then Subordinate Judge. The judgment was against the plaintiff and the decree followed dismissing the suit. The plaintiff appealed to the High Court, and one of the grounds of appeal—the only ground which it is

*First Appeal No. 110 of 1917, from a decree of Shamsuddin Khan, First Additional Subordinate Judge of Aligarh, dated the 24th of January, 1917.

(1) (1913) I.L.R., 35 All, 338. (2) (1903) I.L.R., 35 Cal., 56.