

## APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava

MUNIR UDDIN KIDWAI (DEFENDANT-APPELLANT) v. 1932  
 MUSAMMAT RAISUL-NISA AND OTHERS, PLAINTIFFS August, 1.  
 AND OTHERS (DEFENDANTS-RESPONDENTS).\*

*Civil Procedure Code (Act V of 1908), order XLI, rule 20—  
 Partition—Order declaring the mode of carrying out parti-  
 tion—Appeal against the order—All co-sharers, whether  
 necessary parties—Some necessary parties not impleaded in  
 appeal—Appeal barred against persons not impleaded—  
 Court's power to make the omitted parties respondents  
 under order XLI, rule 20 of the Code of Civil Procedure.*

An order of the partition officer that a partition should be made in accordance with the existing entries in a *khevat* is an order jointly in favour of the whole body of co-sharers and in an appeal from such an order all the co-sharers are necessary parties. Where in such an appeal some of the co-sharers, who are necessary parties to it, are left out and the appeal against them has become time-barred, the court cannot make the co-sharers who were omitted, as respondents in the appeal under order XLI, rule 20 of the Code of Civil Procedure. *V. P. R. V. Chokalingam Chetty v. Seethai Acha (1), Badri Narayan v. East Indian Railway (2), and H. H. the Maharaja of Faridkot v. Anant Ram (3)*, referred to.

Mr. *Hyder Husain*, for the appellant.

Messrs. *Rudra Datt Sinha* and *Akhtar Husain*, for the respondents.

SRIVASTAVA, J.:—This is a defendant's appeal against the decision, dated the 5th of December, 1930, of the learned District Judge of Bara Banki upholding the order, dated the 5th of March, 1930, of an Assistant Collector, First Class, of that district.

\*Second Civil Appeal No. 98 of 1931 against the decree of R. E. Aprakash Chandra Bose, District Judge of Bara Banki, dated the 5th of December, 1930, upholding the decree of M. Abu Said Mohammad Wajib Ullah Khan, Assistant Collector, First Class, Bara Banki, dated the 5th of March, 1930.

- (1) (1927) L.R., 55 I.A., 7. (2) (1926) I.L.R., 5 Pat., 755.  
 (3) (1926) I.L.R., 8 Lah., 161.

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The facts of the case are that six persons applied to the Revenue Court for partition of a mohal. The defendant-appellant filed an objection that 17 bighas odd land, which was recorded as his exclusive property, should be treated as the *shamilat* land of all the co-sharers. The partition officer held that the partition should be made in accordance with the existing entries in the *khewat* and dismissed the objection. The defendant-appellant treating this as decision of a question of title by the partition officer appealed to the court of the District Judge making only the six applicants for partition as respondents to the appeal.

At the hearing of the appeal a preliminary objection was raised to the effect that the appeal was incompetent as the other co-sharers had not been made parties to the appeal and the order of the lower court in their favour had become final. The learned District Judge accepted the objection, observing that if the appeal is entertained and happens to be successful, it would lead to the absurd result that as against the co-sharers who are respondents now, the partition would have to proceed in one way, while as against those who are not parties, the partition would proceed in quite a different manner. As regards the request of the defendant-appellant that the court might implead the other co-sharers as respondents to the appeal under order XLI, rule 20 of the Code of Civil Procedure, the learned District Judge was of opinion that the defendants, who had not been impleaded in the appeal and against whom the appellant's right of appeal had become barred by limitation, had acquired a valuable right of which they should not be deprived by the court exercising its powers under order XLI, rule 20 of the Code of Civil Procedure. He also remarked that as the appellant had deliberately and not inadvertently chosen not to make the other co-sharers respondents it was not a proper case in which he should exercise the discretion allowed to him by order XLI, rule

20 of the Code of Civil Procedure in favour of the appellant. In result he upheld the preliminary objection and dismissed the appeal.

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The only contention urged before me is that the appellant by mistake did not implead the other defendants in the appeal and that it was a fit case in which the lower appellate court ought to have joined the other co-sharers as respondents in the appeal under the provisions of order XLI, rule 20 of the Code of Civil Procedure. In *V. P. R. V. Chokalingam Chetty v. Seethai Acha* (1) their Lordships of the Judicial Committee referring to the provisions of order XLI, rule 20, remarked as follows :

“That rule empowers the court to make such party a respondent when it appears to the court that ‘he is interested in the result of the appeal.’ Giving these words their natural meaning—and they cannot be disregarded—it seems impossible to say that in this case the defendants, against whom these suits have been dismissed and as against whom the right of appeal has become barred, are interested in the result of the appeal filed by the plaintiff against the other defendants.”

In *Badri Narayan v. East Indian Railway* (2), a Bench of the Patna High Court held that order XLI, rule 20, will only apply where there is an appeal pending in the court on which a decision may be given by the court. Therefore, when the appellant impleaded only some of the persons holding a joint decree, there is no proper appeal before the court and the court has no jurisdiction to implead other persons, who have been omitted, beyond limitation, under order XLI, rule 20. In *H. H. the Maharaja of Faridkot v. Anant Ram* (3) a Bench of the Lahore High Court observed that ‘to hold that an appellate court can implead a person who has

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acquired an absolute right as he has in this case by the lapse of time or by the omission of his name from the decree would be tantamount to denying all finality to litigation.' In the present case it is perfectly clear that the effect of the order of the partition officer was that the partition was to be carried out in accordance with the share of each co-sharer as entered in the *khwat*. If the defendant's appeal was to succeed, the result of it would have been that the defendant-appellant would secure 17 bighas land from the share of all the other co-sharers in lieu of the 17 bighas which he wanted to be treated as *shamilat* land. In consequence of the defendant's failure to implead a number of his co-sharers, the order of the partition officer in their favour had become final at the time when the appeal came up for bearing. If the learned District Judge had acceded to the appellant's request to join them as parties to the appeal, the result would clearly have been to deprive these co-sharers of the right which they had acquired by reason of the order of the partition officer having become final in their favour. Moreover, the appeal, as it was framed without all the parties in whose favour the order had been passed by the lower appellate court being made respondents, was not in order, and so there was no proper appeal before the lower court. The order of the partition officer being an order jointly in favour of the whole body of co-sharers all the co-sharers were necessary parties to the appeal. The co-sharers against whom the appellant's objection had been dismissed and against whom his right of appeal had become barred by time can, as observed by their Lordships of the Judicial Committee, hardly be regarded as interested in the result of such an appeal to which they were no parties. Viewed from another standpoint, it may be possible to say that being necessary parties they were much more than merely "interested in the result of the appeal" within the meaning of order XII, rule 20 of the Code of Civil Procedure. I can, under the circumstances,

see no sufficient grounds for interference with the discretion exercised by the learned District Judge in this matter.

The appeal, therefore, fails and is dismissed with costs.

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*Appeal dismissed.*

## REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava*

SUBHANI BEGAM. MUSAMMAT (DEFENDANT-APPLICANT)  
v. IMTIAZ AHMAD KHAN (PLAINTIFF-OPPOSITE PARTY).\*

1932  
November, 2.

*Limitation Act (IX of 1908), article 7—Household servant, meaning of—Person employed to collect house rents and to act as companion, whether “household servant” within the meaning of Article 7 of the Limitation Act.*

*Held, that the words “household servant” in Article 7 of the Indian Limitation Act, 1908, must be read ejusdem generis with the words “artisan, or labourer” which follow it and cannot apply to a person who is employed for the purpose of collecting rents of houses and as a companion in a journey abroad.”*

Mr. *Nasirullah Beg*, for the applicant.

Mr. *Ghulam Imam* for Mr. *Ali Zaheer*, for the opposite party.

SRIVASTAVA, J. :—This is an application under section 25 of the Small Cause Courts Act for revision against the decree, dated the 12th of May, 1932, of the Second Additional Judge, Small Cause Court, Lucknow.

The plaintiff's case was that the defendant had engaged him on a monthly salary of Rs.10 for the purpose of collecting rents of her houses and *kothi* and that later on the defendant requested the plaintiff to accompany her to Mecca and promised to pay him at the rate of Rs.30 per month with other necessary expenses for the

\*Section 25 Application No. 74 of 1932, against the decree of Babu Sheo Gopal Mathur, second Additional Judge, Small Cause Court, Lucknow, dated the 12th of May, 1932.