APPELLATE CIVIL.

Before Harrison and Dalip Singh JJ.

1930

Dec. 9.

RAM KISHAN AND OTHERS (PLAINTIFFS) Appellants

versus

GANGA RAM AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2439 of 1925.

Hindu Law—Suit by Joint Hindu Family—for recovery of a family debt—one son of the Manager—not made a party—whether suit bad for non-joinder—principles applicable.

Plaintiffs alleging themselves to be the members of a joint Hindu family sued defendants on a *bahi* account. The plaintiffs consisted of Nand Lal and his sons (except Sant Ram) and his younger brother. Defendants pleaded that the suit was bad for non-joinder of Sant Ram. Nand Lal alleged that Sant Ram was not a member of the family as he had been adopted by his maternal grand-father, but the trial Court found that the adoption had not been proved, and that as Sant Ram was a necessary party and had not been impleaded, dismissed the suit.

Held, that it is not the form in which the Manager sues which determines his capacity to sue on behalf of the joint family, but the fact, that no body except him has the right to interfere in the business of the joint family or to give a discharge or a receipt for a debt due to or from that joint family, which confers the capacity on the Manager. It is therefore the question of fact whether he is the Manager or not, and not the form in which he sues which determines the question of his capacity.

Kishan Prasad v. *Har Narain Singh* (1), followed.

Rattan Chand v. *Ram Parshad* (2), disapproved.

Case law discussed.

And, as in the present case Nand Lal was the Manager of the family and his younger brother was a co-plaintiff, the

(1) (1911) I. L. R. 33 All. 272, 277 (P. C.). (2) 69 P. R. 1906.

omission of Sant Ram, one of the sons, was immaterial, as in law the sons could not interfere with the father's management of the family business.

First appeal from the decree of Pandit *Kundan Lal*, Bashisht, *Senior Subordinate Judge, Jullundur, dated the 9th May 1925, dismissing the plaintiffs' suit.*

BADRI DAS, J. L. KAPUR and SHIV CHARAN DAS, for Appellants.

SHAMAIR CHAND, QABUL CHAND, MOHAMMAD AMIN and CHANDRA GUPTA, for Din Dyal, for Respondents.

DALIP SINGH J.—In this case the plaintiffs alleging themselves to be the members of a joint Hindu family sued the defendants, who were alleged to be the members of another joint Hindu family, on a *bahi* account and balance struck in favour of the plaintiffs on the *bahi* of the plaintiffs. The defence taken was that the plaintiffs had failed to include one Sant Ram, who was the son of plaintiff No. 1 Nand Lal, in the suit, and that, therefore, the suit was bad for non-joinder of a necessary party. Nand Lal pleaded that Sant Ram was his son, but that he was no longer a member of a joint Hindu family because he had been adopted by his maternal grand-father. An issue was framed on the point and the trial Court held that it was not proved that Sant Ram had been adopted by his maternal grandfather and that, therefore, the suit must fail because Sant Ram was a necessary party on the authority of *Rattan Chand* v. *Ram Parshad* (1). It accordingly dismissed the suit. DALIP SINGH J.

The plaintiffs have come in appeal and it has been contended by them that *Rattan Chand* v. *Ram Parshad* (1) is no longer good law in view of the Privy Council

(1) 69 P. R. 1906.

1930

RAM KISHAN v. GANGA RAM.

DALIP SINGH J.

ruling reported as *Kishan Prasad* v. *Har Narain Singh* (1). The learned counsel for the appellants has also cited the following rulings—*Sharam Singh* v. *Sadhu Singh* (2) a Lahore Division Bench ruling, *Hori Lal* v. *Munman Kunwar* (3), *Madan Lal* v. *Kishan Singh* (4), *Sheo Shankar Ram* v. *Jaddo Kunwar* (5), *Badri Das* v. *Santa Singh* (6), *Muharram Ali* v. *Bansi Lal* (7), *Bhola Roy* v. *Jung Bahadur Singh* (8) (a Calcutta case), *Lalji Nensey* v. *Keshowji Punja* (9), *Lingangowda* v. *Basangowda* (10), and *Jai Kishen* v. *Ram Chand* (11).

The learned counsel for the respondents on the other hand has relied on *Girwar Narain* v. *Mst. Makbulunissa* (12) and *Ramchandra Narayan* v. *Shripatrao* (13), and has endeavoured to distinguish the rulings cited by the learned counsel for the appellants.

As contended by the learned counsel for the respondents three positions are possible. It may be held that all the members of a joint Hindu family must join in bringing any suit concerning their family, and that the manager alone cannot sue without impleading the other members of the family. The learned counsel, however, conceded that it was impossible to maintain this position in view of *Kishen Prasad* v. *Har Narain Singh* (1). The second position is that the manager can sue on behalf of the joint Hindu family, but that he should purport to do so as such, and for this proposition the learned counsel relied on *Girwar Narain* v. *Mst. Mukbulunissa* (12), which is a Patna ruling,

(1) (1911) I. L. R. 33 All. 272 (P. C.).
(2) (1928) 110 I. C. 293.
(3) (1912) I. L. R. 34 All. 549 (F. B.).
(4) (1912) I. L. R. 34 All. 572.
(5) (1914) I. L. R. 36 All. 383.
(6) 3 P. R. 1912.
(7) 34 P. R. 1919.
(8) (1914) 22 I. C. 798.
(9) (1913) I. L. R. 37 Bom. 340.
(10) (1927) I. L. R. 51 Bom. 450 (P. C.).
(11) (1919) 114 I. C. 689.
(12) (1916) 36 I. C. 542.
(13) (1916) I. L. R. 40 Bom. 248, 253.

1930

RAM KISHAN v. GANGA RAM.

DALIP SINGH J.

and *Ramchandra Narayan* v. *Shripatrao* (1) which no doubt support him. The Patna ruling, however, relies on an Allahabad ruling *Hori Lal* v. *Munman Kunwar* (2) as supporting the conclusions that their Lordships had arrived at in that case. The learned counsel for the respondents however, conceded that *Hori Lal* v. *Munman Kunwar* (2), which was a different case from *Girwar Narain* v. *Mst. Makbulunissa* (3), being a case where the manager of the joint Hindu family was a defendant and not a plaintiff, proceeded on different lines altogether from the Patna case and there was nothing to show from the report of *Hori Lal* v. *Munman Kunwar* (2) that the interpretation put on it by the Patna ruling was correct in fact, and that the manager had been sued, as such, in *Hori Lal* v. *Munman Kunwar* (2). I should be inclined to say that while the matter is by no means clear, the ruling reported in *Hori Lal* v. *Munman Kunwar* (2), rather seems to imply that the manager had not been sued as such and that in the second suit it was as a matter of fact disputed that he was the manager at all, though the finding of the Court was that he was the manager. The effect of the authority cited, therefore, is somewhat weakened. In *Ramchandra Narayan* v. *Shripatrao* (1) there is no doubt a remark at page 253 where a similar proposition to that of the Patna High Court is laid down. On the other hand in the rulings cited by the learned counsel for the appellants there is no such distinction drawn between a manager suing as such and the plaintiff in a particular case being in fact the manager.

(1) (1916) I.L.R. 40 Bom. 248, 253.(2) (1912) I.L.R. 34 All. 549 (F.B.).
(3) (1916) 36 I. C. 542.

1930

RAM KISHAN v. GANGA RAM.

DALIP SINGH J.

The question, therefore, remains to be considered whether the Privy Council has laid down that the manager must sue, as such, in order to bind or to be capable of suing on behalf of the joint Hindu family. The reason given by the Privy Council in *Kishan Prasad* v. *Har Narain Singh* (1) for holding that the manager can bring a suit on behalf of the entire joint Hindu family is contained in the following passage :— " The respondents are demanding however, that persons, who are incompetent to interfere 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." It seems to me to follow from the above that it is not the form in which the manager sues which determines his capacity to sue, on behalf of the joint family, but the fact that nobody except him has the right to interfere in the business of the joint Hindu family or to give a discharge or a receipt for a debt due to or from that joint family which confers the capacity on the manager. It is, therefore, a question of fact whether he is the manager or not and not the form in which he sues which determines the question. In the present appeal there is no doubt that Nand Lal as stated by himself was the manager of the joint Hindu family. Except his brother Jagiri Ram all the other persons are his sons, including Sant Ram whose absence has been the ground of the suit's dismissal. It is clear law that a son could not interfere with the father's management of the family business and Jagiri Ram, who, as far as I can gather from the record, is a younger brother of Nand Lal, was on the record. It would follow, therefore, that the suit was properly framed even without

(1) (1911) I. L. R. 33 All. 272, 277 (P. C.).

1930

RAM KISHAN
v.
GANGA RAM.

the inclusion of Sant Ram. I would, therefore, accept the appeal and remand the case, under Order 41, rule 23, Civil Procedure Code, for a decision on the rest of the issues. The stamp on appeal shall be refunded. Costs shall abide the result.

DALIP SINGH J.

HARRISON J.—I agree.

HARRISON J.

A. N. C.

Appeal accepted.
Case remanded.

CIVIL REFERENCE.

Before Addison J.

ISHAR—Plaintiff

versus

DITTU AND OTHERS—Defendants.

1930

Dec. 9.

Civil Reference No. 31 of 1930.

Jurisdiction (Civil or Revenue) Suit for recovery of arrears of rent sold to plaintiff by two out of three landlords —Punjab Tenancy Act, XVI of 1887, sections 4, 77 (3) (n).

Held, that a suit by the purchaser of a 2/3rds share of the rent, to which two out of three landlords were entitled, against the tenants, is cognizable by the civil Courts, the purchaser not being the landlord.

Ganpat Rai v. *Sardara* (1), followed.

Case referred by Commissioner, Jullundur, with his No. 6480, dated the 2nd September 1930, for orders of the High Court.

ADDISON J.—These are two references by the Collector of Hoshiarpur through the Commissioner, for a decision, under section 99 of the Punjab Tenancy Act, as to whether the two suits referred should be tried by a civil or a revenue Court. The two suits are similar in nature and the same order will govern both.

ADDISON J.

(1) 61 P. L. R. 1912.