

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

PADMA'KAR VINA'YAK JOSHI, (ORIGINAL DEFENDANT), APPELLANT, v.
MAHA'DEV KRISHNA JOSHI AND OTHERS, (ORIGINAL PLAINTIFFS),
RESPONDENTS.*

1885.
January.

Hindu law—Minors not bound by decree in suit brought by elder brothers—Manager.

The plaintiffs, Hindu brothers, brought a suit for redemption. During the minority of the plaintiffs their elder brothers had brought a previous suit to redeem the same property, which suit had been dismissed. There was no evidence to show that in that suit they had assumed to act on behalf of the family, or that any one of them had been a *de facto* manager of the family property.

Held, that the plaintiffs were not sufficiently represented in the previous suit, and that, therefore, their present suit was maintainable.

Doorga Persád v. Kesho Persád(1) explained.

THIS was a second appeal from the decision of C. E. G. Crawford, Assistant Judge of Ratnágiri, confirming the decree of Khán Sáheb M. N. Nánávati, Subordinate Judge of Ratnágiri.

The material facts of the case are as follows:—

The plaintiffs sued to redeem certain property which had been mortgaged by their grandfather to the grandfather of defendants Nos. 1, 2 and 3 and the uncle of defendant No. 4 in the year 1822. In 1865, while the plaintiffs were minors, their elder brothers brought a suit to redeem the property, but that suit was dismissed. The defendants contended that the plaintiffs were bound by the result of their brothers' suit, and that their present suit could not be maintained.

Both the lower Courts decided in favour of the plaintiffs.

The defendant No. 3, Padmákar Vináyak Joshi, appealed to the High Court.

Pándurang Balibhadra for the appellant.—The plaintiffs are bound by the decree made in the previous suit brought by their elder brothers—*Jogendro Deb Roy Kut v. Funindro Deb Roy Kut*.(2) In *Bissessur Lall Sahoo v. Mahárája Luchmessur Singh*.(3) it was held that a purchase by a member of a Hindu joint family with

* Second Appeal, No. 303 of 1883.

(1) L. R., 9 Ind. Ap., 27.

(2) 14 Moo. Ind. Ap., 373.

(3) L. R., 6 Ind. Ap., 233.

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the joint funds was a purchase on account of the joint family, and that property so bought could be taken in execution for a joint-family debt. The ordinary rule of Hindu law is that every member of a united family is liable for debts properly incurred by a manager for the benefit of the family—*Samelbhái Nathubhái v. Someshwar*⁽¹⁾. In the case of *Gan Sávant v. Náráyan Dhond Sávant*⁽²⁾ West, J., held that the manager represented the common interests of all the members of the family for all purposes.

Mahádev Chinnáji Apto for the respondents.—The elder brothers could not represent the minors. They were not managers, and did not pretend to act as such. The case of a father is different from that of elder brothers. In *Gan Sávant v. Náráyan Dhond Sávant*⁽²⁾ it was found that the plaintiff in the previous suit had actually represented the infant brothers. The observation of Sir James Colville in *Jogendro Deb Roy Kut v. Funindro Deb Roy Kut*⁽³⁾ is a mere *obiter dictum*. The case of *Doorga Persád v. Kesho Persád*⁽⁴⁾ is in point, and is an authority for the contention that the plaintiffs were not represented in their brothers' suit.

SARGENT, C. J.—The plaintiffs seek to redeem certain property which had been mortgaged by their grandfather to Rám Mahádev, the grandfather of defendants 1, 2, and 3, and the uncle of defendant No. 4. The question to be determined is, whether the plaintiffs are bound by the decree passed in the suit already brought by their elder brothers (they being minors at the time) to redeem the property from the family debt, by which the claim was dismissed. The Courts below have found that they were not bound, and passed a decree for redemption.

The case of *Doorga Persád v. Kesho Persád Singh*⁽⁴⁾ was relied on by the respondent in support of the decree as establishing that a minor cannot be represented by the manager of a Hindu family for the purpose of suing or being sued in respect of his interest in the family property. In that case a suit had been brought on a money-bond against the uncle of the minors and also the minors by their uncle as their guardian, and a decree obtained

(1) I. L. R., 5 Bom., 38.

(2) 14 Moo. Ind. Ap., 373.

(3) I. L. R., 7 Bom., 467.

(4) L. R., 9 Ind. Ap., 27.

for payment of the money against all the defendants. The minors by the suit under appeal sought for a declaration that plaintiff in the former suit was not entitled to execute the decree against their property, and to restrain him from executing it. The Privy Council held that the uncle, although he was the manager of the family estate, not having obtained a certificate under the Bengal Minors Act, XL of 1858, had no right to defend the suit in their name, and that the decree was not binding on the infants, and could not be executed against their property. Their Lordships, however, added that as the bond had been found by the Court below not to have been given for a debt for which the infants were not liable, it was not necessary to inquire whether "although the decree had been obtained against the infants without their having been represented by a guardian, the circumstances of the debt being one for which they were liable could justify the execution of the decree." The decision, therefore, does not, we think, establish more than that, when an infant member of an undivided Hindu family ought to be a party to a suit by name in order to be bound by it, he is not properly represented by the manager of the family, but must be represented by a certificated guardian; and the question whether the plaintiffs were bound by the proceedings in the suit instituted by their elder brothers must still be determined on general principles applicable to the conditions of an undivided Hindu family.

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In *Gan Sávant v. Náráyan Dhond Sávant*⁽¹⁾ Mr. Justice West, discussing the state of the law in 1853, held that the manager of an undivided Hindu family represents the common interests of the family with regard to litigation as to other transactions, and that all the members of the family were foreclosed by the decree in a redemption-suit instituted by the manager and subsequent default in payment of the mortgage-debt. We are not aware of any other case that has gone so far as to lay down, in general terms, the complete identification of the members of a Hindu family with the manager with regard to litigation affecting the common interests.

(1) 1, L. R., 7 Bom., 467.

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In *Mayárám Sevárám v. Jayvantráiv Pándurang*⁽¹⁾ and *Náráyan v. Pándurang*⁽²⁾, which are cited in the judgment in the above case, there were special circumstances which were relied on by the Court as affording ground for holding that the plaintiff had been efficiently represented by the manager. Without expressing any decided opinion as to the soundness of the doctrine enunciated in *Gan Sávant v. Náráyan Dhond Sávant*,⁽¹⁾ we think that in this case the Courts below were right in holding that the plaintiffs, who were minors at the time, were not efficiently represented in their brothers' suit, there being no evidence to show that they assumed to act on behalf of the family, or that either of them was *de facto* manager of the family property.

We think, however, that the documents which appellant by his application, exhibit 44, wished to give in evidence, ought to have been admitted. The appellant had mentioned them, on 4th March 1880, as being documents in another suit which he wished to give in evidence, and would produce on 20th October, the day to which the hearing was adjourned, and produced them.

We must, therefore, reverse the decrees, and send down the case for retrial. Costs of appeal to abide the result.

Decree reversed and case remanded.

(1) Printed Judgments for 1874, p. 41. (2) I. L. R., 5 Bom., 685.

(3) I. L. R., 7 Bom., 467.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

NILO RA'MCHANDRA, (ORIGINAL DEFENDANT), APPELLANT, v. GOVIND BALLAL AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1885,
February 24.

Res judicata—Suit on a family arrangement—Second suit for the same subject matter as co-sharers—Causes of action—Limitation Acts XIV of 1859 and IX of 1871.

The defendant's great-grandfather was uncle of one Baláji Hari, who was the great-grandfather of the plaintiffs, and they (*i.e.*, the defendant's great-grandfather and his nephew Baláji) were entitled in equal half shares to a certain *vatan* property. The defendant and his brothers now represented the former,

* Second Appeal, No. 31 of 1883.