

1887.

SHRI SHRI-  
ESHWAR  
PANDIT  
v.  
SHRI  
HARIHAR  
PANDIT.

the First Class Subordinate Judge. As the plaintiff presented his *darbhást* in the right Court, the parties must pay their own costs throughout up to the present time.

## APPELLATE CIVIL.

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

1887.

August 16.

HARI GOPA'L, (ORIGINAL PLAINTIFF), APPELLANT, v. GOKALDA'S  
KUSHABA'SHET, (ORIGINAL DEFENDANT), RESPONDENT.\*

*Hindu law—Joint family—Manager—Parties to suit—Practice—Suit by manager alone—Co-parceners made parties on objection by defendant—Civil Procedure Code (Act XIV of 1882), Sec. 30—Amendment of pleadings—Plaint amended in second appeal by adding parties.*

The plaintiff as manager of an undivided Hindu family sued to recover possession of certain lands from the defendant. The defendant contended that the plaintiff's minor brother and uncle, who were his undivided co-parceners, should be made parties to the suit. The Court of first instance held that the plaintiff, as manager, could sue alone, and passed a decree for the plaintiff. The first appellate Court reversed the decree, holding that the plaintiff could not sue alone, except under the provisions of section 30 of the Civil Procedure Code, which had not been complied with. On second appeal to the High Court,

*Held*, that the defendant was entitled to have the plaintiff's uncle and minor brother placed on the record either as co-plaintiffs or as defendants. The right of a plaintiff to assume the character of manager, and to sue in that character, raises a question of fact and law which varies as the other members of the family are minors or adults, and, therefore, the defendant is always entitled in such suits, when the objection is taken at an early stage, to have the other members of the family, when they are known, placed on the record, to ensure him against the possibility of the plaintiff's acting without authority.

The plaintiff was allowed on second appeal to amend his plaint by making the other members of the family parties to the suit.

SECOND appeal from a decision of Ráv Bahádur K. B. Bal, First Class Subordinate Judge with appellate powers at Thána.

The plaintiff as manager of an undivided Hindu family sued the defendant to recover possession of certain lands. The defendant contended that the plaintiff's minor brother and uncle, who were his co-parceners, should be made parties in the suit as co-plaintiffs.

\* Second Appcal, No. 375 of 1885.

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The Court of first instance held that the plaintiff could sue alone as manager of the family, and awarded the plaintiff's claim.

The lower appellate Court, on appeal by the defendant, reversed the lower Court's decree, on the ground that the plaintiff could not sue alone, except under the provisions of section 30 of the Civil Procedure Code (Act XIV of 1882), which had not been complied with.

The plaintiff appealed to the High Court.

*Ghanashám Nilkanth Nádkarni* for the appellant :—The plaintiff could sue alone as manager. It is only in cases where there are joint debts that all the co-parceners must be made parties. A decree against the manager binds the other co-parceners. He can, therefore, as a plaintiff represent them. A manager is entitled to bring a suit to establish a right belonging to the family without making other members parties to the suit—see *Arunachala Pillai v. Vythialinga Mudaliyár*<sup>(1)</sup>.

Section 30 of the Civil Procedure Code (Act XIV of 1882) does not apply to a case like this. If necessary, the plaint may now be amended.

*Shivráam Vithal Bhandárkar* for the respondent :—All co-owners must be parties ; otherwise the suit must be dismissed—*Kálidás Kevaldás v. Nathu Bhagván*<sup>(2)</sup>. As between the members of a joint family, any one member may sue, but a defendant is entitled to have the other co-owners joined as parties. Such joinder is necessary for the protection of the defendant : see *Ramsebuk v. Ráamlál*<sup>(3)</sup>. A mere allegation in the plaint, that the plaintiff sues as manager, is not sufficient to cure the defect of non-joinder of parties—see *Bálkrishna Moreskar Kunte v. The Municipality of Mahád*<sup>(4)</sup>. The lower appellate Court was right in holding that the suit was not properly constituted under section 30 of the Civil Procedure Code (Act XIV of 1882). Section 32 does not make it discretionary with the Court to add parties. The plaintiff should be allowed on second appeal to amend the plaint by adding parties.

(1) I. L. R., 6 Mad., 27.

(2) I. L. R., 7 Bom., 217.

(3) I. L. R., 6 Calc. 815.

(4) I. L. R., 10 Bom., 32.

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SARGENT, C. J. :—The plaintiff in this case sued in ejectment as the manager of the undivided family of the deceased Gopál Yadneshwar, to recover possession of the land mentioned in the plaint. The defendant by his written statement took the objection that the other members of the family, mentioning more particularly a minor brother and uncle of plaintiff, should be made parties to the suit. An issue was framed, raising the question whether plaintiff could sue alone. The Subordinate Judge held that the manager of a Hindu family could institute and defend suits on behalf of the family. The lower Court of appeal held that he could not do so without conforming to the provisions of section 30 of the Code. That section enables (with the permission of the Court) one of several persons having the same interest in a suit to sue on behalf of all, by giving notice through the Court to all the parties concerned, in manner therein mentioned, and where the party suing does not, in the eye of the law, represent all the persons intended for the purpose of suing and being sued; but here it is contended by the plaintiff, and was so held by the Subordinate Judge, that, as the manager of an undivided Hindu family, he fully represents the other members of the family for the purpose of litigation, and that the suit is properly framed by the mere statement contained in it that plaintiff sues as manager of the family. However this may be as between the members of the family, it is plain that the right of a plaintiff to assume the character of manager, and to sue in that character, raises a question of fact and law which varies as the other members of the family are minors or adults, whose assent is usually required in important matters, and we think, therefore, that the defendant is always entitled, when the objection is taken at an early stage, to have the other members of the family, when they are known, placed on the record to insure him against the possibility of the plaintiff's acting without authority. Moreover, the reasons which are given in *Kálidás Kevaldás v. Nathu Bhagván* <sup>(1)</sup> for requiring the other members of the family to be made parties, are equally applicable, whether or no the plaintiff describes himself in the plaint as suing as manager of the family. On both grounds

(1) I. L. R., 7 Bom., 217.

we think, therefore, that the defendant was entitled to have the plaintiff's uncle and minor brother placed on the record either as co-plaintiffs or defendants.

We think, however, that under the circumstances of this case, and having regard to the state of the law on the subject, the plaintiff should be, and we hereby direct that he be allowed to amend his plaint by making the other members of the family mentioned by the defendant parties to the suit, and reverse the decree of the Court below for that purpose. Such amendment to be made within a month of the papers being received by the Court of first instance; but, in default, the decree of the lower Court of appeal is to stand confirmed. In any case, the plaintiff must pay the defendant his costs up to the present time.

1887.

HARI GOPAL  
v.  
GOKALDAS  
KUSHABA-  
SHEK.

## REVISIONAL CRIMINAL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

IN RE JANKIDA'S GURU SITA'RAM.\*

1887.

August 17.

*Criminal Procedure Code (Act X of 1882), Secs. 155, 202, 203—Magistrate's power to direct a local investigation by the police—Complaint of an offence cognizable by a Magistrate—Examination of complainant.*

Section 155 of the Code of Criminal Procedure (Act X of 1882) deals only with the powers of police officers. It confers no power or authority on Magistrates to direct a local investigation by the police, or call for a police report.

It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he can take cognizance, to refer the complaint to a police officer. He is bound to receive the complaint, and after examining the complainant to proceed according to law.

THIS was an application for the exercise of the revisional jurisdiction of the High Court under section 435 of the Code of Criminal Procedure (Act X of 1882).

The applicant Jánkidás lodged a complaint before Mr. Ryan, the Acting Second Presidency Magistrate, charging one Gangádás and twelve other persons with criminal trespass and house-trespass, under sections 447 and 448 of the Indian Penal Code (Act XLV of 1860). He alleged that he was the *pujári* and manager of the temple of Shri Mahádev at Nágpáda; that on the 13th June,

\* Criminal Revision; Application No. 157 of 1887.