pay the costs of the respondents in that appeal. As to the other appeal, costs in this and the Lower Appellate Court should come out of the estate, separate sets of costs being allowed to the defendant alienees and the plaintiff.

Decree reversed.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

CHUDASAMA SURSANGJI JALAMSANGJI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* PARTAPSANG KHENGARJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1903. *September* 29.

Civil Procedure Code (Act XIV of 1882), section 30—Gujarát Tálukdars' Act (Bom. Act VI of 1888), section 12(1)*—Representative order—Partition suit—"Known co-sharers"—All persons interested, parties.*

It is a general rule that all persons interested ought to be made parties to a suit, howsoever numerous they may be, so that the Court may be enabled to do complete justice by deciding upon and settling the rights of all persons interested and that the orders of the Court may be safely executed by those who are compelled to obey them and future litigations may be prevented. This rule, no doubt, yields to the exigencies of particular cases and there are well established qualifications to it, such as the power of the Court under section 30 of the Civil Procedure Code (Act XIV of 1882) to make a representative order.

The phrase '*known co-sharers*' in section 12 of the Gujarát Tálukdárs' Act (Bom. Act VI of 1888) covers all persons who are known to have an interest in the property and is not limited to those co-sharers whose names are recorded under the Act.

* Second Appeal No. 480 of 1900.

(1) Section 12 of the Gujarát Tálukdárs' Act (Bom. Act VI of 1888).

12. (1) The Tálukdári Settlement-Officer, or other officer aforesaid, on receiving an application for partition, shall, if the application be not open to objection on the face of it, publish a notification of the same in the office of the Mámlatdár of the táluka and at some conspicuous place in the village in which the estate to which the application relates is situate or in each of the villages comprised in the said estate, as the case may be.

(2) He shall also serve a notice on each of the known co-sharers who has not joined in the application, requiring any of them who objects to the partition to appear before him to state his objection either in person or by a duly authorized agent, on a day to be specified in the notice not less than thirty or more than sixty days from the date on which such notice is issued.

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A person, who ought to be, but is not, a party to a proceeding is not ordinarily bound by any decree or order passed therein.

SECOND appeal from the decision of Lalshankar Umiashankar, Additional First Class Subordinate Judge of Ahmedabad with Appellate Powers, confirming the decree of V. M. Mehta, Subordinate Judge of Dhandhuka.

Suit for declarations and an injunction.

One Pachanji, a Chudasama Garasia, was the owner of Tálukdári estates in the villages of Kharad and Salasar in the Ahmedabad District. He had two sons, Bawaji the elder and Samatsang the younger. In the year 1889 three sharers in the branch of Bawaji and one sharer in the branch of Samatsang having brought a suit, No. 1 of 1889, for partition of the joint Tálukdári lands in the said villages against the sharers in the branch of Samatsang in the Court of the Tálukdári Settlement Officer, it was held that according to the family custom relied on by the plaintiffs, the sharers in Bawaji's branch were entitled to one share and a half and those in Samatsang's branch to one share. Thereafter the descendants in Samatsang's branch brought a suit, No. 2 of 1893, in the Court of the Tálukdári Settlement Officer and obtained a decree for division in two equal shares. The proceedings came up in second appeal to the High Court, where also it was held that the rights of the two branches were equal.

In the year 1897 the plaintiffs Chudasama Sursingji and Chudasama Umedsangji, sons of Chudasama Jalamsangji, a representative of Bawaji's branch, brought the present suit against their father (defendant 1), paternal uncle (defendant 2) and all the other members of the family (in all fifty-two defendants) for a declaration that they being descendants of the elder branch, were entitled, according to the custom obtaining among the Chudasama Garasias, to one share and a half, and those of the younger branch, to one share in the joint Tálukdári lands and that the decree in suit No. 2 of 1893 obtained by defendants 18—52 against defendants 1—17 was wrong and not binding upon them inasmuch as they, though necessary parties, were not joined therein and that the defendants colluded together and did not adduce proper evidence. The plaintiffs further prayed for an injunction restraining the defendants from executing the said decree.

Defendants 1, 2, 5—7, 10, 12, 13, 15 and 17 admitted the plaintiffs' allegations and claim.

Defendants 3, 4, 8, 9, 11, 14 and 16 admitted the plaintiffs' claim and stated that they were not parties to suit No. 2 of 1893, that the said decree was fraudulently obtained and they were not bound by it.

Defendants 18, 26, 32 and 38 contended that defendants 1, 2, 5—7, 10, 12, 13, 15, 17, 18, 22, 24, 26, 29, 32, 34, 38, 41, 43, 45, 49 and 51 had shares in the land in dispute and their shares had been determined in suit No. 2 of 1893; that the rest of the defendants had no shares because their fathers were alive; that plaintiffs' father, defendant 1, was a party to the said suit, the decree in which was ultimately confirmed by the High Court in second appeal No. 596 of 1896; that the present suit was, therefore, *res judicata*; that the plaintiffs' father and other defendants in that suit had taken a leading part in defending it, thus the allegation in the plaint that the defendants colluded together and did not adduce proper evidence was not true; that the plaintiffs lived jointly with their father, therefore they were not necessary parties to that suit; that there was no such custom in the family of the parties as was alleged in the plaint; that decree No. 1 of 1889 was collusively obtained by some of the sharers only, therefore the plaintiffs cannot take any advantage of it; that the said decree had been set aside by the Tálukdári Settlement Officer and by the High Court; and that the plaintiffs were not entitled to the shares as alleged in the plaint, and that the plaintiffs had no right to have the execution of decree No. 2 of 1893 stopped.

The defence of defendants 22, 24, 29, 34, 37, 41, 43, 45, 49 and 51 was the same as that of defendants 18, 26, 32 and 38.

Defendants 19, 20, 21, 23, 25, 27, 28, 30, 31, 33, 35, 36, 39, 40, 42, 44, 46, 47, 48, 50 and 52 contended that their fathers were alive, therefore they were wrongly joined as defendants.

The Subordinate Judge found that the plaintiffs could not, during the lifetime of their father, claim a share in the lands in dispute; that the suit was *res judicata*; that the decree in suit No. 2 of 1893 was not improperly obtained and was binding on the plaintiffs; that the claim was time-barred; that the defendants whose fathers were alive were wrongly impleaded in the suit;

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that the decree in suit No. 1 of 1889 was impliedly cancelled by the decree in suit No. 2 of 1893; that the rights of the two branches of the family were equal, and that the plaintiffs were not entitled to any relief. He, therefore, dismissed the suit.

On appeal by the plaintiffs the Lower Appellate Court confirmed the decree. After the decision in appeal, plaintiffs' father, defendant 1, died.

The plaintiffs preferred a second appeal.

Branson (with *G. S. Rao*) appeared for the appellants (plaintiffs):—We were not parties to the partition suit of 1893 and so the decision in that suit is not binding on us. The first Court has, in connection with certain documents, observed that if those documents had been before the Court in the suit of 1893, the decision in that suit would have been in accordance with our claim for a larger share. We were co-sharers with our father and, therefore, we were necessary parties to that suit.

Next we contend that our father died after the appeal in the Lower Court was decided. The state of circumstances, therefore, is now altered. Admitting that the suit was not maintainable during the lifetime of our father, still as he is now dead, the case should now be decided according to the law at present applicable to the circumstances of the case: *Rustomji* v. *Sheth Purshotamdas*.[1]

Ráo Bahádur V. J. Kirtikar (Government Pleader) appeared for respondents 19, 22, 25, 37, 38, 41—45 and 47—50:—The plaintiffs were not necessary parties to our suit of 1893. Their father, who was then alive, sufficiently represented them in that suit. He was a defendant and actively conducted the defence. In that suit the plaintiffs' father and uncle produced all the evidence which the plaintiffs have now brought forward. They even came up to the High Court in second appeal and also presented a petition of review. The plaintiffs were quite aware of those proceedings, and if they thought that they were necessary parties, they ought to have made an application to that effect. At that time they were not "co-sharers" within the meaning of section 12 (2) of the Gujarát Tálukdárs' Act as their names were not entered in the register kept under that Act.

(1) (1901) 25 Bom. 606; 3 Bom. L. R. 227.

The suit is not maintainable inasmuch as it was filed during the lifetime of the plaintiffs' father who was joint with his brother and other coparceners: *Apaji Narhar* v. *Ramchandra*.[1]

Ramdatt V. Desai appeared for respondents 29, 33, 34, 36 and 40—42.

JENKINS, C. J.:—The property in suit is a Tálukdári estate and the purpose of this litigation is to obtain a final decree of a Court of competent jurisdiction declaring the plaintiffs to be entitled to certain shares in that estate so as to lay the foundation for proceedings under Part III of the Gujarát Tálukdars' Act, 1888.

In 1889 an application was made for partition of the estate and a decree passed. This decree, however, was afterwards set aside as the proper parties had not been brought in, and in accordance with the order of the Tálukdári Settlement Officer fresh proceedings were commenced which ultimately resulted in a partition.

The present plaintiffs were not parties to those proceedings, and it is for that reason they bring the present suit.

Both Courts, however, have held that the suit is barred, (*a*) because in the lifetime of the plaintiffs' father it is not maintainable, and (*b*) because the plaintiffs were represented in the former proceedings by their father and are therefore bound. The first of these grounds is based on the Full Bench decision in *Apaji* v. *Ramchandra*.[1] That decision is binding on us, but even assuming for the sake of argument that during the father's lifetime it governed this case, that no longer is so now that the father is dead, for though the death occurred after the decree in the Lower Appellate Court, we can decide the case on the basis of conditions as they now exist: *Rustomji* v. *Sheth Purshotamdas*.[2]

The only point, therefore, for our consideration is whether the plaintiffs are barred by the former proceedings.

It is a general rule that all persons interested ought to be made parties to a suit, however numerous they may be, so that the Court may be enabled to do complete justice by deciding

(1) (1891) 16 Bom. 29.
(2) (1901) 25 Bom. 606; 3 Bom. L. R. 227.

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upon and settling the rights of all persons interested, and that the orders of the Court may be safely executed by those who are compelled to obey them and future litigations may be prevented (Mitford on Pleading, p. 190).

It is in obedience to this rule that in partition suits all known co-sharers must be before the Court: see *Pahaladh Singh* v. *Mussamut Luchmunbutty*[1]; *Kali Kanta Surma* v. *Gouri Prosad Surma Bardeuri*[2].

This rule no doubt yields to the exigencies of particular cases, and there are well established qualifications of it. Among them, as appropriate here, we may refer to the power of the Court under section 30 of the Civil Procedure Code to make a representative order.

What we have to consider in this case is how far this rule governs proceedings under the Tálukdári Act, and what consequences follow on a departure from it.

Now the Act has a specific provision on this point, for section 12 provides as follows:—

(1). The Tálukdári Settlement-Officer, or other officer aforesaid, on receiving an application for partition, shall, if the application be not open to objection on the face of it, publish a notification of the same in the office of the Mámlatdár of the Táluka and at some conspicuous place in the village in which the estate to which the application relates is situate or in each of the villages comprised in the said estate, as the case may be.

(2). He shall also serve a notice on each of the known co-sharers who has not joined in the application, requiring any of them who objects to the partition to appear before him to state his objection either in person or by a duly authorized agent, on a day to be specified in the notice not less than thirty or more than sixty days from the date on which such notice is issued.

This section is (in our opinion) a recognition of the general rule to which we have alluded; for it appears to us that the phrase *known co-sharers* covers all who are known to have an interest in the property and is not limited to those co-sharers whose names are recorded under the Act, as has been contended by the Government Pleader: this last contention is not in accordance with the plain and accepted meaning of the words, nor can we find any sufficient reason in the Act, or elsewhere, for reading these words with the limitation suggested: on the other hand it

(1) (1869) 12 W. R. (Civ. Rul.) 256 at p. 259. (2) (1890) 17 Cal. 906.

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appears to be an element in favour of adopting the natural meaning of the words that it leads to a result in accord with the policy of the general rule of practice that prevails in Courts of law.

It is not suggested that the plaintiffs in this case are not co-sharers in the sense we have here ascribed to the word, or that they were not known, or that they have stood by so as to be now estopped, and therefore we must now consider what is the legal consequence of their not having been served with notice; for admittedly they have not been served.

Here again we have as a guide the general rule of the ordinary Civil Courts that a person, who ought to be, but is not, a party to a proceeding is not ordinarily bound by any decree or order passed therein. So here we think the plaintiffs are not bound by the proceedings before the Tálukdári Settlement Officer.

For these reasons we think the decree of the Lower Appellate Court should be reversed and the case remanded for trial on the merits. Costs will abide the result.

Decree reversed. Case remanded.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Chandavarkar, and Mr. Justice Jacob.

1903. *September* 29.

BABAJIRAO GAMBHIRSING (ORIGINAL DEFENDANT), APPELLANT, *v.* LAXMANDAS GURU RAGHUNATHDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

Limitation Act (XV of 1877), schedule II, article 47—Civil Procedure Code (Act XIV of 1882), section 13, explanation II—Math—Manager—Possessory suit in Mámlatdár's Court in a personal and private capacity—Subsequent civil suit in a representative capacity—Limitation.

The defendant took the house in dispute on lease from one Raghunathdas who was the manager of a certain math. After the death of Raghunathdas his disciple, the present plaintiff, brought a possessory suit in the Mámlatdár's Court against the defendant, and the Mámlatdár on the 6th May, 1889, dismissed the suit on the ground that by not producing a succession certificate the

* Second Appeal No. 26 of 1903.