

is one where the plaintiff as the principal co-sharer can, I think, legitimately sue alone to eject an alleged trespasser: cf. *Shutari v. The Magnesite Syndicate, Limited*⁽¹⁾. No doubt the defendant might have objected to the other co-sharers not being joined as parties to the suit, cf. *Ballerishna Moreshwaar Kunte v. The Municipality of Mahad*⁽²⁾, but no such objection was taken (although the Court appears to have suggested their joinder), and it must accordingly, under Order I, Rule 13 of the Civil Procedure Code, be deemed to be waived.

Decree varied.

R. R.

(1) (1915) 39 Mad. 501.

(2) (1885) 10 Bom. 32.

APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and
Mr. Justice Kincaid.*

NARIMAN RUSTOMJI MEHTA (ORIGINAL DEFENDANT), APPLICANT v.
HASHAM ISMAYAL VALAD HAJI KHAMISA (ORIGINAL PLAINTIFF),
OPPONENT^c.

1924.

August 18.

*Limitation—Review proceedings—Exclusion of time taken up in review—
Application for leave to appeal to His Majesty in Council—Partnership
Suit—Value of appellant's share in partnership—Civil Procedure Code (Act
V of 1908), section 110.*

Where, in a partnership suit, leave to appeal to His Majesty in Council was applied for, the petitioner contending that the decree involved a claim respecting property of the value of Rs. 10,000, within the meaning of the second paragraph of the section 110, Civil Procedure Code, 1908,

Held, that it was the value of the appellant's share in the partnership that must be looked to and not the value of the whole of the partnership property.

^c Civil Applications Nos. 202 and 203 of 1924.

1924.

NARIMAN
RUSTOMJI
v.HASHAM
ISMATALL.*De Silva v. De Silva*⁽¹⁾, followed.

Appellant allowed to add the time occupied by the prosecution in good faith of an application for review to the period prescribed for presenting petition for leave to appeal.

CIVIL applications:

These were two applications; one for appealing to His Majesty in Council, and the other for excuse of delay in filing the first application.

The facts and arguments are sufficiently set forth in the judgment.

J. R. Gharpure, for the applicant.

K. H. Kelkar, for the opponent.

SHAH, AG. C. J. :—This is an application for leave to appeal to His Majesty in Council. The application was filed on February 12, 1924. The decree sought to be appealed from was passed on February 9, 1923. The application is, therefore, beyond time, and the first question is whether the delay in presenting the application should be excused. The reason relied upon for excusing the delay is that the petitioner filed an application for a review of the decree, now sought to be appealed from, on April 13, 1923. On that application a Rule was granted by this Court in September 1923, and that Rule was discharged on February 11, 1924. It is urged that as the petitioner was pursuing the remedy by way of review, the time taken up from April 13, 1923, up to February 11, 1924, should be excused under section 5 of the Indian Limitation Act and reliance is placed upon the decision in *Brij Indar Singh v. Kanshi Ram*⁽²⁾.

In the present case, having regard to the fact that the petitioner was prosecuting this application in good faith, we think that the time occupied in prosecuting

⁽¹⁾ (1904) 6 Bom. L. R. 403.

⁽²⁾ (1917) L. R. 44 I. A. 218 ;
45 Cal. 94.

that application should be deducted in calculating the period of limitation for presenting the application for leave to appeal to His Majesty in Council. If that time is deducted, it is clear that the application is within time.

We, therefore, make the Rule absolute on the application for excusing delay, and order the costs of the rule to be costs in the Rule on the main application.

As regards the application for leave to appeal to His Majesty in Council, the trial Court had dismissed the suit, and in appeal this Court passed a decree for dissolution, and directed an account of the partnership to be taken. The case was remanded to take accounts. Under section 110, therefore, of the Code of Civil Procedure, if the petitioner, who is the original defendant, can show that the subject-matter involved in this appeal is worth Rs. 10,000, or more he would be entitled to the necessary certificate. On this point, he relies upon the 2nd paragraph of section 110, because it is clear on the facts of this case that the amount or value of the subject-matter of the suit in the Court of first instance, or the amount or value of the subject-matter in appeal cannot be shown on the present materials to be Rs. 10,000 or upwards. It is urged that the decree or final order directly or indirectly involves a claim or question respecting property of the amount or value of Rs. 10,000 or upwards. Beyond the mere statement in the petition there is nothing to support this statement. No affidavit has been filed. The plaintiff valued his share in the plaint provisionally at Rs. 5,001. The same valuation was accepted for the purposes of the appeal to this Court; and for the first time it is alleged in the petition that the value is more than Rs. 10,000.

It is contended that the property for this purpose must be taken to be the whole of the partnership property. No authority is cited in support of that

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proposition. The decision of this Court in *De Silva v. De Silva*^{a)} is against this contention. That was a case of partition; but on principle it can make no difference on this point whether it is a partition suit or a partnership suit. It is the value of the appellant's share and not the whole of the property that should be looked to. The petitioner can succeed only if the value of the whole of the partnership property is taken as the amount or value of the property affected by the decree. That cannot be done; and there is no allegation that the value of the share of the defendant is Rs. 10,000 or more. We, therefore, discharge the Rule with costs.

KINCAID, J. :—I agree.

Rule discharged.

R. R.

^{a)} (1904) 6 Bom. L. R. 403.

APPELLATE CIVIL.

Before Mr. Justice Marten and Mr. Justice Fawcett.

1924.

August 14.

NUR MAHOMED BEG MAHOMED (ORIGINAL PLAINTIFF), APPELLANT
v.
G. MONTEATH, DISTRICT MAGISTRATE, POONA (ORIGINAL
DEFENDANT), RESPONDENT^{b)}.

Cantonments (House-Accommodation) Act (VI of 1923), sections 7, 10 (e), 30, 32—House in Cantonment—Owner in occupation of house—Order to vacate by Commanding Officer—Appeal to higher military authorities—Suit in civil Court not competent—Jurisdiction.

Where the owner in occupation of his own house, within the limits of a Cantonment to which the Cantonments (House-Accommodation) Act, 1923, applies, is called upon by the Commanding Officer of the Cantonment to vacate the house by a notice issued under section 7 of the Act, his proper remedy, even if he disputes the legality of the notice, under section 10 (e), is to appeal to the higher Military Authorities under the provision of section 30, and not to take proceedings in the civil Court.

^{b)} First Appeal No. 189 of 1924.