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PRALHAD MADHOBA v. ABOOBAKAR ABDUL REHMAN & CO.

Rangnekar J.

question is whether a part of the cause of action has arisen within jurisdiction. Now the plaintiffs' case is that the mortgage was executed in Bombay. Under Order XXXIV, rule 1, of the Civil Procedure Code, all persons interested in the equity of redemption are necessary parties, and must be joined in a suit to enforce a mortgage. The plaintiffs say in their plaint that the appellant claims to have a charge on the property, and they pray that a declaration to establish their mortgage against all the defendants should be granted. On these facts it is difficult to see how a part of the cause of action has not arisen within the jurisdiction of this Court. It is not disputed that leave to sue has been granted. I think, therefore, the Court had jurisdiction to try the suit as against defendant No. 6. I agree that the appeal should be dismissed with costs.

Attorneys for appellant: Messrs. *Souza & Co.*

Attorneys for respondents: Messrs. *Amarchand & Mangaldas.*

Appeal dismissed.

B. K. D.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

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SHRIRAM SURAJMAL (ORIGINAL DEFENDANT No. 2), APPELLANT *v.* SHRIRAM JHUNJHUNWALLA AND OTHERS (ORIGINAL PLAINTIFF AND ORIGINAL DEFENDANTS NOS. 7, 8 AND 9), RESPONDENTS.*

Practice and procedure—Civil Procedure Code (Act V of 1908), Order VIII, rule 5—Statements in plaint—Defendants not putting in written statement, effect of.

Under the provisions of Order VIII, rule 5, of the Civil Procedure Code every allegation in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be

*O. C. J. Appeal No. 55 of 1935; Suit No. 1520 of 1934.

admitted except as against a person under disability. This rule applies in all cases irrespective of the fact whether a defendant has put in a pleading or not.

Ross & Co. v. *Scriven and others*,[1] not followed.

SUIT to recover money.

Plaintiff and defendant No. 6 carried on business under the name and style of Snehiram Joharmal at Calcutta. Defendants Nos. 7, 8 and 9 were members of a firm carrying on business in the name of Mannalal Shivnarayen. The said firm of Snehiram Joharmal and the firm of Mannalal Shivnarayen carried on business in partnership *inter alia* in Bombay in the name of Snehiram Joharmal.

The plaintiff alleged that the said Bombay firm of Snehiram Joharmal had dealings in cotton and money with the joint family firm of Shriram Goenka of which defendants Nos. 1, 2, 3, 4 and 5 were the managing members. Defendants Nos. 5 and 5a were the sons of defendant No. 2.

As a result of the dealings between them the Bombay firm of Snehiram Joharmal became entitled to receive from the firm of Shriram Goenka a sum of Rs. 1,42,705-12-0.

Under an award dated June 30, 1933, the plaintiff had become entitled to the right, title and interest of defendant No. 6 in the said firm of Snehiram Joharmal. The plaintiff also alleged that under another award he also became entitled to the interest of defendants Nos. 7, 8 and 9 in the Bombay firm of Snehiram Joharmal.

Under these circumstances the plaintiff filed a suit against defendants Nos. 1 to 5a to recover the said sum of Rs. 1,42,705-12-0. To this suit he made defendant No. 6 and defendants Nos. 7, 8 and 9 as formal parties.

Defendants Nos. 1, 2, 3, 4, 5 and 5a denied their liability on various grounds. Defendants Nos. 6, 7, 8 and 9 did not file any written statement and did not appear at the hearing of the suit.

[1] (1916) 43 Cal. 1001.

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The suit came on for trial before Chitre J. He dismissed the suit as against defendants Nos. 1, 3, 4, 5 and 5a and passed a decree as prayed only against defendant No. 2. At the hearing acting under the powers given to the Court under Order I, rule 10 (*2*), of the Civil Procedure Code, Chitre J. transposed defendants Nos. 7, 8 and 9 as plaintiffs Nos. 2, 3 and 4 and directed that the plaint should be amended accordingly.

Defendant No. 2 filed an appeal against the judgment of Chitre J. contending, *inter alia*, that the plaintiff was not entitled to sue alone as the debt had not vested in him and the trial Court was not justified in transposing defendants Nos. 7, 8 and 9 as plaintiffs Nos. 2, 3 and 4 without their consent and passing a decree in their favour.

M. V. Desai, with *N. A. Mody*, for the appellant.

Sir Jamshed Kanga, with *M. C. Chagla*, for respondent No. 1.

The appeal Court held, [per Rangnekar J. with whom the Chief Justice agreed] dismissing the appeal, that as the title to the debt had vested in plaintiff No. 1 alone under the two awards and that as defendants Nos. 7, 8 and 9 did not appear and dispute the plaintiff's right to sue, it was not necessary to transpose defendants Nos. 7, 8 and 9 as plaintiffs Nos. 2, 3 and 4 and that it was competent to the trial Court to pass a decree in favour of the original plaintiff alone. The appeal Court therefore varied the decree and passed one in favour of the original plaintiff alone.

In the appeal Court it was argued by counsel for the appellant that because defendants Nos. 7, 8 and 9 had not put in a written statement, they should not be taken as having admitted the allegations in the plaint, particularly as regards the vesting in the plaintiff of the interest of defendants Nos. 7, 8 and 9 in the Bombay firm of Snehiram Joharmal.

In support of his contention on this point he relied upon *Ross & Co.* v. *Scriven and others.*[1]

Beaumont C. J. in the course of his judgment made the following remarks as regards this point.

BEAUMONT C. J. I only desire to add a few words on a subsidiary point argued by Mr. Desai. It was argued that defendants Nos. 7 to 9 failing to put in a written statement were not to be taken as having admitted the allegations in the plaint, and in support of his argument Mr. Desai referred to the case of *Ross & Co.* v. *Scriven and others,*[1] in which the learned Chief Justice, in referring to Order VIII, rule 5, said that it was clear from the wording of that rule that it is only intended to apply to a case where a pleading has been put in by the defendant, and does not apply to a case in which the defendant has put in no pleading. I desire for myself to say that I emphatically dissent from that view. Order VIII, rule 5, provides that every allegation in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted, except as against a person under disability. The rule down to that point is in substantially the same terms as Order XIX, rule 13, of the Rules of the Supreme Court, and it seems to me to provide in terms that every allegation of fact in the plaint must be taken as admitted unless denied or stated to be not admitted in the pleading of the defendant. If there is no pleading of the defendant, it is obvious that it can contain no denial or non-admission. I have myself never heard it suggested that the English rule does not apply to a defendant who does not put in a defence. There is, however, a proviso to Order VIII, rule 5, which does not appear in the English rule. That proviso enables the Court in its discretion to require any fact so admitted to be proved otherwise than by such admission. In this country where

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false suits are not unknown, the power may often usefully be exercised in practice, but if the Court does not exercise such power, it seems to me plain that a defendant who has not put in a defence is bound by all the allegations in the plaint, and I think, therefore, that in this case defendants Nos. 7 to 9 were bound by all allegations in the plaint.

Beaumont C. J.

Attorneys for appellant: Messrs. *Thatte & Co.*

Attorneys for respondent No. 1: Messrs. *Pathare & Liladhar.*

B. K. D.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1936
March 13

NOWROJI ARDESHIR COOPER AND ANOTHER (ORIGINAL APPLICANTS), APPELLANTS *v.* THE OFFICIAL ASSIGNEE, BOMBAY (ORIGINAL RESPONDENT), RESPONDENT.*

Presidency-towns Insolvency Act (III of 1909), section 8 (2)—Order refusing to review an order passed by a judge exercising insolvency jurisdiction, whether appeal lies from it—Practice.

An appeal lies under the provisions of section 8 (2) of the Presidency-towns Insolvency Act, 1909, from an order made by a Judge on a review of an order passed by a Judge exercising insolvency jurisdiction. That section does not import that an appeal only lies if conditions exist which would make an order passed by a Judge in the exercise of his original civil jurisdiction appealable.

P. Abdul Gaffor v. *The Official Assignee*[1] and *Arjuna Iyer* v. *Official Assignee, Rangoon*,[2] dissented from.

PROCEEDINGS in insolvency.

One Rustomji Ardeshir Cooper was adjudicated insolvent in 1933 on a petition filed in 1931. The insolvent had some heavy litigation in the High Court of Bombay in respect of some partnership disputes. The said suit was originally filed by the insolvent and on his adjudication, on the

*Appeal No. 43 of 1935: Insolvency Case No. 760 of 1931.

(1) (1925) 3 Ran. 605. (2) (1928) 6 Ran. 363.