1922.

SHANKAR-BHAT v. SAKHARAM-BHAT.

point is a good one, we could deal with the matter either in revision or under section 151 of the Civil Procedure Code. We think this is clearly a case in which the plaintiff should not be debarred from continuing the suit. We set aside the order dismissing the suit and direct that the plaintiff be allowed to continue the suit *in forma pauperis*. All costs will be costs in the case.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr Justice Coyajee.

1922.

March 6.

GANGARAM BHIKU MAHADIK AND ANOTHER (ORIGINAL DEFENDANTS NOS. 2 AND 3), APPELLANTS *v.* SHRIMANT SARDAR BAPUSAHEB ALIAS KRISHNARAO DAULATRAO MAHADIK AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 1), RESPONDENTS*.

Ejectment—Property owned by Hindu co-parceners—Rent note in favour of a co-parcener—Suit by that member alone—Non-joinder, effect of.

The plaintiff Krishnarao and his cousins jointly owned the property in suit. The property was leased to defendants who had signed rent notes in favour of the plaintiff. The plaintiff having sued to recover possession, the defendants contended that the suit was bad for non-joinder of plaintiff's cousins.

Held, over-ruling the contention, that the fact that the rent notes were signed in favour of the plaintiff would by itself entitle the plaintiff to sue for possession as the defendants refused to comply with the terms of the rent notes and that the non-joinder could not in any way prejudice the defendants as they would not be liable to have any demand made upon them for rent by plaintiff's cousins.

Bando v. *Jambu*[1]; *Gurushantappa* v. *Chanmallappa*[2]; and *Sayad Fatulla valad Sayad Kamlodin* v. *Bola bin Shivaya Gavda*[3] referred to.

Balkrishna v. *Moro*[4], distinguished.

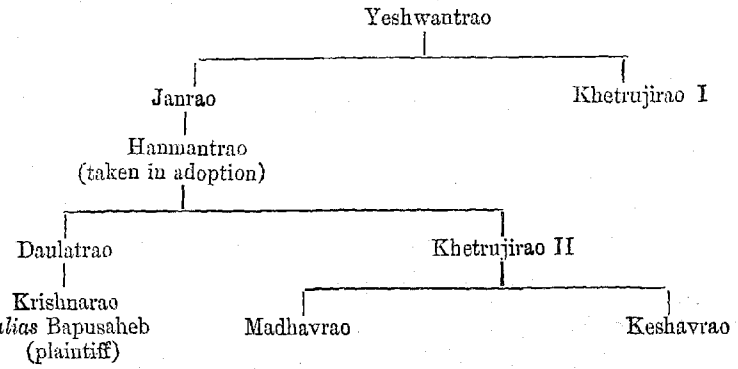
* First Appeal No. 95 of 1921.

(1) (1910) 12 Bom. L. R. 801.
(2) (1899) 24 Bom. 123.
(3) (1884) P. J. 33.
(4) (1896) 21 Bom. 154.

FIRST appeal against the decision of V. P. Raverkar, First Class Subordinate Judge of Satara.

Suit to recover possession.

The plaintiff, Krishnarao *alias* Bapusaheb, was a Sardar and Jahagirdar in the Gwalior State. The village of Ninam in the Satara District was granted in Jahagir to the plaintiff's ancestor Yeshwantrao for services in Scindia's battles. The genealogy of the plaintiff's family was as follows :—



The plaintiff sued to recover possession of the lands in suit alleging that the title to the land vested in him, that they were held by the defendants under rent notes of 1910 and 1915 by which they agreed to pay Rs. 528-11-0 as yearly rent, and that they had not paid the rent for the years 1915-16 to 1918-19.

The defendants in addition to numerous other defences contended that the suit failed owing to the non-joinder of the plaintiff's cousins Madhavrao and Keshavrao. The Subordinate Judge decreed the plaintiff's claim.

Defendants Nos. 2 and 3 appealed to the High Court.

G. S. Rao, for the appellants.

K. N. Koyaji, for respondent No. 1.

1922.

GANGARAM BHIKU v. BAPUSAHEB.

The portion of the judgment of their Lordships dealing with the abovementioned contention was as follows :—

MACLEOD, C. J.:—Then it was urged that the suit must fail for non-joinder of proper plaintiffs. Undoubtedly in the pedigree Madhavrao and Keshavrao are members of Janrao's family, the junior branch, being first cousins of the plaintiff. From the evidence of the plaintiff's Mukhtyar it seems that Madhavrao and Keshavrao were drawing an allowance of Rs. 300 a month, each from the estates composing the Jahagir. The Jahagir, we have been told, is very valuable, the income being estimated at Rs. 75,000 a year, and the fact that these two members of the junior branch are only drawing Rs. 300 a month each, seems to show that it is recognised in Gwalior that the elder branch of the Jahagirdar's family has permanent rights to the revenues of the Jahagir. However that may be, the fact remains that the rent-notes were signed by the defendants in favour of the plaintiff, and that by itself would entitle the plaintiff to sue for possession if the defendants refuse to comply with the terms of the rent-notes. Not only that, but they have set up their own title against the title of the plaintiff. We do not think in these circumstances the suit is bad because the plaintiff has sued alone without joining Madhavrao and Keshavrao. Such a non-joinder cannot in any way prejudice the defendants as they would not be liable to have any demand made upon them for rent by Madhavrao and Keshavrao, and they would not be concerned with any question which might arise between the plaintiff and his cousins with regard to the income of the property.

In *Bando* v. *Jambu*[1] the plaintiff sued to recover on a promissory note, but Mr. Justice Chandavarkar at

[1] (1910) 12 Bom. L. R. 801.

p. 809 dealt generally with the rights of one member of a Hindu family to sue on a contract made with an outsider when the contract was made to that member alone. The learned Judge says :

"The law is that where credit is given to an individual member in a Hindu family, by an outsider, in respect of a contract, whether it be of money-lending, or of letting, the contract is one on which that member alone is entitled to sue. The principle of the decision in *Gurushantappa* v. *Chanmallappa*[1] has been followed as regards leases executed in favour of a single co-parcener in a joint Hindu family. There is a ruling to that effect in *Sayad Fatulla valad Sayad Kamlodin* v. *Bola bin Shivaya Gavda*[2] where it was held that 'he who passes a Kabulayat to one of two or more who have a common interest cannot free himself from his liability by payment to another unless that other is the agent of the one with whom he has contracted. The defendant having attorned to the nephew exclusively and had enjoyment undisturbed by the nephew in consequence, must pay him'. That principle has been followed in a series of cases, which will be found in our Printed Judgments and also in the Law Reports".

Reliance is placed by the appellants on *Balkrishna* v. *Moro*[3]. But that case is only an authority for this proposition that, where a co-sharer is a manager of the family property and has issued a notice on a tenant calling upon him to pay enhanced rent, he cannot maintain a suit by himself and in his own name, to eject a tenant who has failed to comply with the notice. It is clear that when the question of demanding enhanced rent arises, it would be to the prejudice of the tenant if one member of the joint family could issue a notice to enhance and, if that was not obeyed, sue in ejectment by himself. If that were allowed the tenant might be open to a succession of suits by various members of the family of a similar kind. No question of the sort arises in this case since, as we have pointed out, the defendants are in no way prejudiced by the plaintiff suing alone, and in no case could there be any

(1) (1899) 24 Bom. 123. (2) (1884) P. J. 33.

(3) (1896) 21 Bom. 154.

1922.

GANGARAM BHIKU v. BAPUSAHEB.

chance of their being troubled by another suit filed by the other members of the family. We think, therefore, that the judgment of the Court below was right and the appeal must be dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1922 *March 16.*

RATANBAI BHRATAR SHIVLAL LOHAR (ORIGINAL PLAINTIFF), APPLICANT *v.* SHANKAR DEOCHAND LOHAR (ORIGINAL DEFENDANT), OPPONENT*.

Civil Procedure Code (Act V of 1908), Order IX, Rule 8; Order XVII, Rules 2 and 3—Adjournment—Plaintiff absent at an adjourned date—Dismissal of suit—Practice.

It is necessary for the Courts to exercise extreme caution when on an adjourned date the parties or any of them fail to appear. Recourse should, in the first place, be had to Order XVII, Rule 2, and reference made to Order IX to ascertain the proper procedure to be followed; but even in cases where Order XVII, Rule 3, can be considered to apply, that is to say, where the case has been part-heard and an adjournment granted, it would not be in accordance with justice to refuse a party who has failed to appear on the adjourned date at the time fixed, but appears at a later hour, the chance of having the suit restored.

Shrimant Sagajirao v. *S. Smith*[1], relied on.

APPLICATION under Extraordinary Jurisdiction against the order passed by J. D. Dikshit, District Judge of Khandesh.

Ratanbai sued to recover money due on a bond passed by Shankar. The defendant admitted execution of the bond but denied receipt of consideration.

*Civil Extraordinary Application No. 265 of 1921.

(1) (1895) 20 Bom. 736 at p. 743.