

1921.

SUNDER  
SPINNER  
v.  
MAKAN  
BEULA.

him on evidence that the summons was sent by registered post and returned refused, he appeared and denied that the packet had ever been delivered to him by the postal authorities. Rule will be made absolute.

Costs, costs in the cause.

SHAH, J. :—I agree.

*Rule made absolute.*

R. R.

### APPELLATE CIVIL.

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

1921.

June 26.

ATMARAM BABAJI CHOWGALE (ORIGINAL DEFENDANT), APPLICANT v. NARAYAN ARJUN DERE (ORIGINAL PLAINTIFF), OPPONENT<sup>o</sup>.

*Civil Procedure Code (Act V of 1908) Order I, Rule 8—Caste—Under caste rules powers of management vested in a Managing Committee—Resolution of the Managing Committee authorising the President of the caste to file suits—President not competent to file ejectment suits in his own name—Bombay Rent (War Restrictions) Act (Bom. Act II of 1918), section 9—Communal purpose—Whether letting out to certain members a reasonable and bona fide purpose of the community.*

The plaintiff as President of a caste was authorised under a resolution passed by the Managing Committee of the caste to file suits in ejectment in his own name. The Managing Committee was elected by the community under caste rules for the management of caste properties. The object in filing the suits was to eject the existing tenants for the purpose of letting out the premises to the members of the community,

*Held*, (1) that the resolution passed by the Managing Committee did not entitle the President to sue in his own name since, there being numerous members of the community having the same interest in the suit, notice of the institution of the suit to all such persons as well as the permission of the Court was necessary for filing the suit, as provided in Order I, Rule 8, of the Civil Procedure Code, 1908 ;

(2) that it could not be said that the community required the premises for their own purposes reasonably and *bona fide* when the intention was to turn out the existing tenant and put in one of the community.

<sup>o</sup>Civil Extraordinary Application No. 17 of 1921.

APPLICATION under Extraordinary Jurisdiction against the decision of A. A. Chitre, Judge of the Court of Small Causes at Bombay.

1921.

ATMARAN  
BABAJI  
v.  
NARAYAN  
ARJUN.

Suit in ejectionment.

The plaintiff was the President of the Twashta Kasar Community and Shri Mahakali Sansthan which consisted of a communal temple and property attached to it.

Under the rules framed by the community a Managing Committee was appointed to look after or manage the Sansthan property of the community. The President and the members of the Managing Committee were both independently elected by the community.

By a resolution of the Managing Committee, dated the 23rd December 1920, the plaintiff who was the President of the Managing Committee was authorised to give notice and to file ejectionment suits on behalf of the community and after recovering possession of the premises from the existing tenants to rent the same to certain members of the community who had applied for them.

A notice was accordingly served on the defendant who was a tenant in the community's premises at Pydhoni, Bombay, but he having refused to vacate, the plaintiff filed the suit in his name alone.

The defendant denied the plaintiff's right to sue on behalf of the community and contended that the premises were not reasonably and *bona fide* required for the use of the community.

The Small Cause Court Judge, Mr. Chitre, allowed the plaintiff's suit holding that under the resolution of the Managing Committee the President could act validly on behalf of the community and their Sansthan

1921.

ATMARAM  
BABAJI  
v.  
NARAYAN  
ARJUN.

property; that the premises were reasonably and *bona fide* required by the community. On both these findings his reasons were:

"I have to draw from them the general intention of the community and I have no hesitation in saying that the community desires to put their President above all other office bearers and that Rule 2 provided for a Managing Committee 'to look after or manage the Sansthan property of the community.' It is a Board of Management with a President both of whom are independently elected by the community. No doubt the difficulties met with in the case in interpreting the sense and intention of the community will induce the community to revise the rules under skilled guidance. For the purpose in hand I find that the resolution of the Managing Committee authorising the President to give notice and file suits in ejectment is a sufficient authority on which the President can validly act on behalf of the whole community and their Sansthan property.

"The next question relates to an equally delicate question. The copper-smith shops near Pydhoni are the Sansthan property. That is the centre of business in that particular trade. The Managing Committee have now resolved to give these shops to members of their community in preference to outsiders. And in these hard times I do not see why members of any particular community may not ask for full participation in the communal estate. The case is however slightly complicated by the fact that the applicant is himself a member of the Managing Committee and has voted in his favour. But this again is a sign of backwardness in education, rather than want of *bona fides* in the Board of Management. Defendant had a Ganja licence; same has been cancelled and as without a licence defendant could not carry on that business, the plaintiff rightly selected to proceed against him in ejectment."

The defendant applied to the High Court.

*K. N. Koyajee* with *R. B. Paymaster*, for the applicant:—The President of the community could not sue alone in his own name. There being numerous members of the community interested in the suit, the Court's permission should have been taken and notice should have been issued to all the members under Order I, Rule 8, of the Civil Procedure Code. The resolution of the Committee authorizing the President to file suits could not and did not dispense with compliance to the rule of law. There are several

English and Indian authorities on the point but the section is clear and imperative.

Again, letting out the premises to individual members of the community is not a reasonable and *bona fide* purpose within section 9 of the Rent Act. The premises were not required for the benefit of the community or the temple, and an existing tenant cannot be driven out for the benefit of third parties, even though they may be members of the community.

*B. J. Desai* with *J. G. Rele* and *S. A. Shete*, for the opponent:—Under the rules framed by the caste, the management of the Sansthan was vested in a Managing Committee, the President and members of which were elected at a general meeting of the caste. The President of the Managing Committee was also the President of the caste. He was the chief controlling authority and as he was authorised by a resolution of Managing Committee to file suits, the application of Order I, Rule 8, does not come in. Permission of the Court was not necessary. Supposing that the permission was needed, it can be granted even at a later stage and the suit cannot be defeated for want of it. There are authorities: *Fernandez v. Rodrigues*<sup>(1)</sup>; *Ahmed Ali v. Abdul Majid*<sup>(2)</sup>.

On the second point we submit that the premises of the community were needed by the members of the community. They being part of the community their advantage was an advantage to the community and was a reasonable and *bona fide* purpose within section 9 of the Rent Act, 1918.

MACLEOD, C. J.:—The plaintiff took proceedings under Chapter VII of the Presidency Small Cause Courts Act to eject the defendant from the premises

(1) (1897) 21 Bom. 784.

(2) (1916) 44 Cal. 258.

1921.

ATMARAM  
BABAJI  
v.  
NARAYAN  
ARJUN.

1921.

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ATMARAM  
BABAJI  
v.  
NARAYAN  
ARJUN.

in his occupatio as a tenant. The plaintiff is the President of the Twashta Kasar Community, and the property of which the defendant was a tenant formed part of the endowment of a temple of the community called Shri Mahakali Saunsthan. It was contended that the plaintiff was entitled to sue alone because the Board of Management had authorised the President to give notice and file ejectment suits on behalf of the community. That would not entitle the plaintiff to sue in his own name. There being numerous members of the community having the same interest in the suit, notice of the institution of the suit to all such persons as well as the permission of the Court was necessary for filing the suit as provided in Order I, Rule 8, of the Civil Procedure Code. In our opinion the notice given by the plaintiff was defective.

But we notice there is a further objection to the decree for possession which was given to the plaintiff. The learned Judge said: "The copper-smith shops near Pydhoni are the Saunsthan property. That is the centre of business in that particular trade. The Managing Committee have now resolved to give these shops to members of their community in preference to outsiders. And in these hard times I do not see why members of any particular community may not ask for full participation in the communal estate. The case is, however, slightly complicated by the fact that the applicant is himself a member of the Managing Committee and has voted in his favour. But this again is a sign of backwardness in education rather than *bona fides* in the Board of Management." But the fact remains that it cannot be said that the community, assuming the property belongs to them, required the premises in suit for their own purposes reasonably and *bona fide*, when the intention was to turn out the existing tenant and put in one of the

community, and the decision of the learned Judge cannot possibly be supported. The Rule, therefore, will be made absolute and the suit will be dismissed with costs throughout.

*Rule made absolute.*

J. G. R.

1921.

ATMARAM  
BARAJI  
v.  
NARAYAN  
ARJUN.

## APPELLATE CIVIL.

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

JASRAJ BASTIMAL, A FIRM BY ITS OWNERS JASRAJ BOHARIDAS AND OTHERS (ORIGINAL PLAINTIFF), APPLICANT v. SADASHIV MAHADEV WALEKAR (ORIGINAL DEFENDANT), OPPONENT<sup>c</sup>.

1921.

July 1.

*Indian Evidence Act (I of 1872), section 115—Estoppel—Minor—Representation by a minor that he is of full age—Borrowing money on passing a promissory note—Suit on the promissory note—Minor estopped from pleading minority.*

The defendant, who was nineteen years of age, had a guardian appointed by the Court. He borrowed money by passing a promissory note, representing to the plaintiff that he was a major. In a suit on the promissory note, he pleaded his minority :—

*Held*, that, if the plaintiff acting on the defendant's representation that he was a major lent him money, the defendant was estopped from pleading his minority.

*Dadasaheb Dasrathrao v. Bai Nahani*<sup>(1)</sup>, followed.

THIS was an application under Extraordinary Jurisdiction against the decision of H. V. Chinmugund, Judge of the Court of Small Causes at Poona.

SUIT to recover money.

On the 17th March 1918, the plaintiff lent Rs. 700 to the defendant for which the latter passed a promissory note.

<sup>c</sup>Civil Extraordinary Application No. 328 of 1920.

(1) (1917) 41 Bom. 480.