

Before Mr. Justice Loch and Mr. Justice Mitter.

GANES CHANDRA CHOWDHRY AND OTHERS (PLAINTIFFS)
v. RAM KUMAR CHOWDHRY (DEFENDANT.)*

Act VIII. of 1859, s. 7—Relinquishment of Claim.

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June 25.

In a suit by members of a Hindu family which had become separate in 1862, to recover certain moneys said to have been misappropriated by the defendant while manager of the joint estate, it appeared that the plaintiffs had previously sued him, since the separation, to recover certain other moneys belonging to the said joint estate also said to have been misappropriated by him while manager, and obtained a decree.

Held, that the present claim should have been included in the former suit, and whether the omission was by mistake or not, it must be taken to have been relinquished, and under section 7 of Act VIII. of 1859 could not now be entertained.

THE circumstances of this case were as follows. The plaintiffs sued to recover 5,000 rupees. The defendant was the manager of his and their joint family estate during a period extending from the end of the year 1266 (1859) to the month of Aswin 1269 B. S. (1862), and kept under his control and in his custody all the papers and account-books connected with the joint family estate.

Within the estate Deace Bawooly was a Golabari at Govindpore, of which one-third share belonged to the defendant and a two-third share to the plaintiffs. It was asserted that during the incumbency of the defendant as manager of the joint property, he fraudulently misappropriated the whole amount of paddy which was in stock in the Golabari at Govindpore, and withheld all account-books relating to the joint property. After relinquishing Rs. 588-2, the plaintiffs claimed 5,000 rupees.

The separation of the family took place in 1269, B. S. (1862), from which time the plaintiffs dated their cause of action. The defendant filed a lengthy written statement denying liability, and pleading *inter alia* that the plaintiffs had once before instituted a suit, No. 49 of 1864, in the Principal Sudder Ameen's Court, on the ground that he had misappropriated certain money belonging

* Regular Appeal, No. 237 of 1868, from an order of the Judge of Nuddea, dated the 27th June 1868.

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to the joint estate during his managership, and obtained a decree; that the cause of the present action accrued before the institution of, but was not included in, that suit. It must therefore be supposed that the claim was relinquished, and could not now be proceeded with under section 7 of Act VIII. of 1859.

The lower Appellate Court dismissed the suit on other grounds to which it is not now necessary to refer.

Baboo *Mahini Mohan Roy* and *Annada Prasad Banerjee* for appellant.

Baboo *Mahendra Lal Shome* for respondent.

On appeal by the defendant to the High Court, the following judgment was delivered by.

MITTER, J.—We are of opinion that this suit is barred by section 7, Act VIII. of 1859. The test in all cases of this description is whether the cause of action upon which the new suit is brought is distinct from the cause of action upon which the former suit was instituted.

On referring to the former suit, we find that the claim then made was for certain monies said to have been misappropriated by the present defendant, during the time he was acting as the manager of the joint family; and his refusal to allow to the present plaintiffs their share of the said monies at the time of separation was stated to be their cause of action in that suit.

The cause of action in the present suit, as stated by the plaintiffs, is the refusal of the defendant to make over to them their share of certain paddy when the separation of the family took place in the month of Aswin 1269, B. S. It is clear therefore that the causes of action in both the cases originated in the refusal of the defendant to give to the plaintiffs their share of the properties realized by him as manager of the joint family.

The learned Judge of the Court below seems to be of opinion that the plaintiffs had by mistake omitted to include the present claim in the former suit, and he adds that this mistake was a *bona fide* one. But whether the omission arose from a mistake

or otherwise it is not necessary for us to determine in order to apply the provisions of section 7 of Act VIII. of 1859. This point was raised before the Privy Council in the case of *Buzloor Ruheem v. Shamsunissa Begum* (1), and it was distinctly held by their Lordships that whether a particular claim arising out of the same cause of action is voluntarily relinquished or otherwise, the result would be the same, and a second suit for that claim would be barred by section 7, Act VIII. of 1859. It seems to us clear therefore that the present suit is governed by the Privy Council decision above referred to; and if we were to hold otherwise, the consequences would be grievous indeed.

The manager of a joint Hindu family holds possession of various items of property, both real and personal, on behalf of the family,—Can it be contended for a moment that each member of the family has a separate cause of action for his share in each item of those properties? If such were the case, the manager would be harassed by as many different suits as there were different items of property under his management during the time the family remained joint.

We are therefore of opinion that this suit is barred by section 7, Act VIII. of 1859 and on that ground we dismiss it with costs.

Before Mr. Justice L. S. Jackson, and Mr. Justice Markby.

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June 28

BIND UBASINI DEBI (PLAINTIFF) v. PATIT PABAN CHAT-
TAPADHYA AND OTHERS (DEFENDANTS).*

Suit for Possession—Decree.

The plaintiff sued for possession of one-third share of certain land after demolition of the building erected thereon by the defendants, who were her co-sharers.

Held, that the plaintiff was not entitled to a decree for demolition of the buildings, as she had no right to compel her co-sharers to adopt her views of the enjoyment of the property. She could only get a decree for possession of an undivided one-third share.

* Special Appeal, No. 3291, of 1868 from a decree of the Second Subordinate Judge of Hooghly, dated the 15th September 1868, reversing a decree of the Moonsiff of Serampore in that district, dated the 28th May 1868.