Before Mr. Justice Bayley and Mr. Justice Mitter.

MOKHA HARAKRAJ JOSHI AND OTHERS (DEFENDANTS) *v.* BISESWAR DOSS (PLAINTIFF).* 1870 *April* 20.

Act VIII of 1859, *s.* 17, *cl.* 2—*Recognized Agents.*

A recognized agent, under clause 2, section 17, Act VIII of 1859, cannot prosecute or defend a suit in his own name.

A gomasta of a firm ceases to be a recognized agent under clause 2, section 17, Act VIII of 1859, when the business of the firm has ceased before the institution of the suit.

Baboo *Anukul Chandra Mookerjee* (with him Mr. *M. L. Swadyal*) for appellants.

Baboo *Grish Chandra Ghose* for respondent.

MITTER J.—The plaintiff, on the record of this case, calls himself the gomasta of certain native merchants, residing out of the local limits of the Court in which the suit was instituted, but having, as it is alleged in the plaint, a firm or house of business within those limits. The defendant objected to the power of the plaintiff to bring this suit, upon the ground that the business referred to by him had been stopped some time before the presentation of the plaint.

Both the lower Courts have held that this plea is not valid, upon the ground that although the firm had ceased to exist, the plaintiff was still entitled to maintain this action under clause 2, section 17, inasmuch as there are debts due to the firm which still remain to be collected.

We are of opinion that this decision is erroneous in law. Assuming for argument's sake, that the plaintiff is still entitled to consider himself as a recognized agent within the meaning of clause 2, section 17, Act VIII of 1859, that position would give him no power to maintain this action, as in his own name and person as plaintiff. Now the position of recognized agents is specified in section 16 as follows:

"All applications to any Civil Court, and all appearances of parties in any "Civil Court, except when otherwise especially provided, shall be made by the "party in person or by his recognized agent, or by a pleader duly appointed "by him to act on his behalf."

All that a recognized agent can do under this section, therefore, is to file applications or to enter appearance on behalf of his principal; but there is nothing in either of these two privileges which would entitle him to institute or to defend a suit, as plaintiff in the one case, or as defendant in the other; the same privileges are also given to pleaders duly appointed for the purpose: but then a pleader has no right to maintain a suit, as in his own person and name, when he has no personal interest in the matter.

* Special Appeal No. 1846 of 1869, from a decree of the Judge of Patna, dated the 31st May 1869, affirming a decree of the Subordinate Judge of that district, dated the 9th March 1869.

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We are further of opinion that the plaintiff is not entitled to be treated as a recognized agent within the meaning of clause 2, section 17, Act VIII of 1859. That section says that "persons carrying on trade or business for and in the name of parties not within the jurisdiction of the Court" shall be considered as recognized agents within the meaning of section 16 "in matters connected with such trade or business only." But it is admitted in this case that the firm is no longer in existence, and we are unable to see how the plaintiff can be now legally regarded as the gomasta of a firm which is no longer a firm. That the members of that firm have still to collect their dues, or to pay their liabilities, does not alter the fact of the non-existence of the firm. The words of the section are "carrying on trade or business;" and it is impossible to say that the plaintiff is still carrying on such trade, or business, or that his functions as a gomasta of the non-existent firm have not ceased to collect, even if there be outstandings. The plaintiff has produced nothing to show that he has been authorized to collect them.

It has been contended that this objection is a technical one. This is not so. What is there on the record of this case to show that the defendant is protected from being sued again by the alleged principals of the plaintiff upon the same cause of action? And how again is the defendant to execute any order which may be passed in his favor in this case, against those parties? The plaintiff in this case may be a man of straw for aught that we know, and it would be certainly unfair to the defendant if we allow this action to proceed.

It has been further urged that permission may be given to the plaintiff to amend the proceedings by making his alleged principals parties to the suit. We do not think that this request ought to be admitted now in special appeal. The objection was taken at the earliest stage of the case, and the plaintiff had ample opportunity to make any amendment he liked. It is too late now to ask for such an indulgence, and it would be just as convenient for his alleged principals to commence proceedings *de novo*.

For the above reasons, we reverse the decisions of both the lower Courts and dismiss this suit with all costs against the plaintiff personally, and not as the representative of his alleged principals.

Before Mr. Justice Bayley and Mr. Justice Mitter.

ASKAR (DEFENDANT) *v.* RAM MANIK ROY AND OTHERS (PLAINTIFFS).*

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Prescription, Right of—Permissive Possession.

To constitute a right by prescription, the possession must have been as of right. Mere permissive possession cannot be the basis of right of prescription.

* Special Appeal, No. 2046 of 1869, from a decree of the Officiating Judge of Tipperah, dated the 3rd June 1869, affirming a decree of the Sudder Moonsiff of that district, dated the 31st October 1867.