

PRIVY COUNCIL.

P.C.*
1889
November 19.

MOHINI MOHUN DAS AND OTHERS (PLAINTIFFS) v. BUNGI
BUDDAN SALLA DAS AND OTHERS (DEFENDANTS).

[On appeal from the High Court at Calcutta.]

*Parties—Joinder of parties—Civil Procedure, ss. 30 and 34—Limitation—
Signature of plaint by one of several co-plaintiffs.*

There is no rule that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint.

Three suits for money were filed by one of three joint-creditors, the others being named as co-plaintiffs with him in the plaints, which he alone signed and verified. An order was made by the Court after the filing of the plaints that one of these joint-creditors should be added as a co-plaintiff, as if he had not been on the record already. If the date of that order had been the date of suit brought, limitation under Act XV of 1877, sched. II, art. 67, would have applied; but it was held that all the joint-creditors became plaintiffs when the plaints were filed, the order adding parties being inoperative, and that the suits when instituted were not defective for want of parties.

THREE consolidated appeals from three decrees (24th February 1886), affirming three decrees (March 31st, 1884) of the First Subordinate Judge of Zilla Dacca.

The plaints (filed 2nd November 1883) in the three suits were signed and verified by Mohini Mohun Das, son of the late Modhusudan Das; but Govind Rani Dasi, widow of another son deceased, Mohini Mohun being described as manager acting on her behalf, and Khetter Mohun, another brother, described as "interested plaintiff," were named as co-plaintiffs. The cause of action was money lent from the money-lending business carried on by the plaintiffs in the name of the late Modhusudan Das, the defendants having signed *hat-chittas*, and the loan with interest having amounted to Rs. 2,001. An agreement dated 22nd Aghran 1268 (8th December 1875) was filed to show that Mohini Mohun was manager for the brothers.

Mohini Mohun petitioned (22nd November 1883) to be allowed to sue on behalf of Khetter Mohun; the latter petitioned (2nd

* *Present*: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

January 1884) that he might be joined as a plaintiff. An order (8th January 1884) was made that he should be made a plaintiff in the suits. The Subordinate Judge having heard the three suits together on issues raising the questions of Mohini Mohun's authority and of limitation, dismissed them, on the ground that the admission of the debt, which without admission would have been barred by limitation, was made (Assin 1287, September 1880) more than three years before the order making Khetter Mohun a party (8th January 1884) was passed. Till that order was made, the suits in the opinion of the Judge had not been effectively filed, being defective for want of the proper parties having been made plaintiffs.

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The High Court (CUNNINGHAM and O'KINBEALY, JJ.), on appeals preferred by the three co-plaintiffs, supported this decision, on the ground that one of the three plaintiffs, who was a necessary party to the suits, had not been brought on to the record until after the expiration of the period of limitation.

The three alleged co-plaintiffs having appealed.

Mr. J. H. A. Branson (with whom was Mr. T. H. Cowie, Q.C.), for the appellants, argued that the decisions of the Courts below were incorrect. All the persons interested as plaintiffs were before the Court, being properly on the record, so that the suit, when filed on the 2nd November 1883, at which time the debt was not barred, was not, as had been erroneously supposed, defective for want of parties. Where the interests of joint-contractors had to be enforced, one of them, if duly authorized, might sue on behalf of all interested; and his authority might be shown. Reference was made to the Civil Procedure Code, sections 30 and 34, and to the requirement that any such objection as the present should be taken at the earliest possible opportunity. There was, however, no valid objection to Mohini Mohun's having sued on behalf of all the joint-creditors. He was manager on their behalf as shown by an agreement filed; and, in fact, neither of them had disavowed the claim, as filed by him, with their names mentioned as co-plaintiffs.

Reference was made to *Sujad Ali Khan v. Lalla Kasheenath Doss* (1); *Mokha Harakraj Joshi v. Bisaswar Doss* (2); *Bisandas*

(1) 6 W. R., 181.

(2) 6 B. L. R. Ap. 11 : 13 W. R., 344.

1889 *Magniram v. Lakmichand Kisanchand* (1), and the Civil Procedure Code, ss. 26, 32, cls. 3 & 4.

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Mr. R. V. Doyle, for the respondent Bungsi Buddan Saha, contended that the suits were instituted by Mohini Mohun alone. He alone signed and verified the plaints. The agreement on which reliance had been placed did not expressly authorise the bringing suits by Mohini on behalf of Gobind Rani; but the main question was,—when did Khetter Mohun become a party to these suits? It was not at the institution of the suits on 2nd November 1883 that he did so. The suits, having been filed by Mohini Mohun alone, were defective till the 8th of January 1884, by which time they were barred by limitation. The attempted joinder, or ineffectual attempt to join Gobind Rani Dasi was also a complete objection. Reference was made to section 36, Civil Procedure Code, and to *Ramsevak v. Ramlall Koondoo* (2).

Mr. J. H. A. Branson replied.

Their Lordships' judgment was delivered by

LORD MACNAGHTEN.—These suits were instituted on the 2nd of November 1883 to recover monies alleged to be due to Mohini Mohun, Gobind Rani, and Khetter Mohun jointly, on an account acknowledged and signed in 1880. In both Courts the suits were held to have been originally defective for want of parties, and to have been barred by the Law of Limitation before the defect was cured.

On the face of the plaints the three joint-creditors are named as co-plaintiffs. The names of Gobind Rani and Khetter Mohun have not been struck out, nor did they, or either of them, attempt to repudiate the suits. But still it was contended that Mohini Mohun was the sole plaintiff, or, at any rate, that Khetter Mohun ought not to be treated as a co-plaintiff from the commencement of the litigation.

In the first place it was said that the plaints were signed and verified by Mohini Mohun alone. But that is immaterial. There is no rule providing that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint.

Then as regards Khetter Mohun, it was said that both Mohini Mohun and Khetter Mohun himself took the view that he was not

(1) 6 Ben. H. C., 150.

(2) I. L. R., 6 Calc., 815.

originally a plaintiff. Having named Khetter Mohun as co-plaintiff, Mohini Mohun presented petitions asking for permission to prosecute the suits on behalf of Khetter Mohun, relying, as appears by the plaints, on section 30 of the Civil Procedure Code of 1882, which only applies "when a suit is brought by one person on behalf of other persons having joint interests, but not named as co-plaintiffs." Notice of the petitions was given to Khetter Mohun, and he being named as co-plaintiff already asked to be made a plaintiff. By some oversight orders to that effect were made on the 8th of January 1884. The orders were merely waste paper. These various experiments or blunders cannot, in their Lordships' opinion, affect the real position of the parties, which is plain on the face of the record. The question, as Mr. Doyne put it, is simply this:—When was it that Khetter Mohun became a party to these suits? If it was on the 2nd of November 1883 the suits were in time. If it was not till the 8th of January 1884, they were too late. Their Lordships think that Khetter Mohun, as well as Gobind Rani, became a party, as plaintiff, on the 2nd of November 1883, and that the suits therefore are not barred by lapse of time.

Their Lordships will humbly advise Her Majesty that the appeals ought to be allowed, that the decrees of the Subordinate Court and the High Court ought to be reversed, and that the suits should be remanded to the High Court with a direction that they should be tried on the merits by the Subordinate Court, and giving the parties leave to raise such issues and to adduce such evidence as they may be advised, and that the costs which have been incurred in the Subordinate Court should abide the results of the suits, and the costs which have been incurred in the High Court be paid by Bungsi Buddan Saha Das. The respondent, Bungsi Buddan Saha Das, will pay the costs of these appeals.

Appeals allowed : suits remanded.

Solicitors for the appellants : Messrs. *Watkins & Lattey.*

Solicitors for the respondent Bungsi Buddan Saha : Messrs.

T. L. Wilson & Co.

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