Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kishen Parshad and others v. *Har Narain Singh and others, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the* 1*st February* 1911.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD MERSEY.
LORD ROBSON.
SIR ARTHUR WILSON.
Mr. AMEER ALI.

[DELIVERED BY LORD ROBSON.]

The question to be determined in this Appeal is whether or not the suit is barred by the Indian Limitation Act of 1877.

There is no doubt that when first brought, it was well within the statutory period of three years, but it is contended by the Respondents that it was not then brought by all the proper and necessary Plaintiffs, and that afterwards, when the Record was amended in that respect, the statutory time had expired.

The suit was commenced by the first three Plaintiffs on the record. They are the managing members of an undivided Hindu joint family governed by the Mitakshara law, and, as such managing members, they carry on the business of money-lenders together at Hanumanganj in the district of Ballia, as a firm, under the name and style of Manorath Bhagat Dhana Ram.

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The other members of the joint family do not participate in the management of that business or "shop," as it is called, and the loan transactions out of which the claim arises were negotiated and concluded by the members of the said firm alone, with the first three Defendants, who are also members of another undivided Hindu family.

The accounts between the parties began in 1895, and balances were periodically agreed between them until the 9th August 1901, when the last balance was struck and the period of limitation began to run. On that date the Defendants duly acknowledged the correctness of the balance then appearing in the Plaintiff's books, and executed a sarkhat or agreement admitting it to be due and payable by them. It is found by the learned Subordinate Judge that this agreement was made between the Defendants and the first three Plaintiffs, who accordingly brought their action for the balance in question on the 3rd June 1904. The Defendants objected that all the members of the family to which the Plaintiffs belonged ought to be joined with them as Plaintiffs. On the 22nd August 1904, the original Plaintiffs, while denying that the other members of the family were necessary parties, and alleging themselves to be the proprietors and managers of the firm, yet with a view to removing the Defendants' objection for what it was worth prayed for leave to add the other members of the family as Plaintiffs. Leave was accordingly given, and the amendment was made on the 8th September 1904. By this time the three years allowed by Act 15 of 1877, 2nd Schedule, Article 64, had expired, and it became necessary to determine whether or not the additional Plaintiffs were really necessary parties, because if not, the suit had always been properly constituted and the time under the statute

stopped running on the 3rd June 1904, within the three years.

The learned Subordinate Judge of Ghazipar decided in favour of the Plaintiffs, but the High Court for the North Western Provinces reversed his Judgment. Their Lordships are of opinion that the Judgment of the learned Subordinate Judge ought to be restored.

The Indian decisions as to the powers of the managing members of an undivided Hindu joint family are somewhat conflicting. It is however clear that where a business like money-lending has to be carried on in the interests of the family as a whole, the managing members may properly be entrusted with the power of making contracts, giving receipts and compromising or discharging claims ordinarily incidental to the business. Without a general power of that sort, it would be impossible for the business to be carried on at all, and there is no reason to doubt the correctness of the finding of the learned Subordinate Judge that the first three Plaintiffs here were in fact entrusted with, and regularly exercised, such a power in regard to this money-lending business. He finds in broad terms that all the business relating to the shop had been carried on in the names of the first three Plaintiffs only, and that all lawsuits relating to the shop, or the family, had also been instituted in their names alone.

Is there any principle of law, or any custom applicable to a case like this, according to which the managing members of a Hindu joint family intrusted with the management of a business must be held incompetent to enforce at law the ordinary business contracts they are entitled to make or discharge in their own names? The Defendant is, of course, entitled to insist on all the persons with whom he expressly contracted being made parties to the suit, and that was done

in the action as originally framed in this case. There were no other parties to the contract of the 9th August 1901 than the Respondents and the first three Plaintiffs. The Respondents are demanding, however, that persons who are incompetent to interfere in the business of the contract, or to give a receipt under it, and are merely interested in its profits shall be treated as parties necessary to its enforcement. The High Court thought there was much to be said in favour of the view taken by the Court below, but considered the matter concluded by authority. They cited the case of *Kattusheri Khanna* v. *Vallotil Narayanan* (I.L.R. 3 Mad. 234) which was a case turning on the co-ownership of land. The co-owners were an association of individuals of which only some brought the action while others supported the Defendants. Knight, C.J., held that all the co-owners in such a case must join and that they could not invest the managers of their property with the right to sue in their own names or in a representative capacity. Their Lordships think that this proposition, thus broadly stated as to co-ownership, cannot be applied to the managing members of a business carried on for an undivided Hindu joint family. It was not so applied in the later case of *Arunachala Pillai* v. *Vythialinga Mudaliyar*, (I.L.R. 6 Madras, 27), where it was stated that the managing member of an undivided Hindu family suing as such, is entitled to bring a suit to establish a right belonging to the family without making the other members of the family parties to the suit.

Stress was laid by the High Court on the Judgment in *Ramsebuk* v. *Ram Lal Koondoo*, (I.L.R. 6 Cal. 815). In that case a business was carried on for the benefit of a Mitakshara family by a firm consisting of four members of the family. The action in question was brought by

two only of the partners, and the other two were not added until after the period of limitation had expired. The Court held that the Plaintiffs must fail because all the co-contractors had not been added as Plaintiffs. Garth, C.J., says, p. 824: "if in this case it had been found in the Court "below as a fact that the contract was made "*between the Defendant and the two original* "*Plaintiffs only* there would be no difficulty in "deciding in their favour, because the joinder of "the other two Plaintiffs would only have been a "*misjoinder* which, by Section 31 of the Code of "Civil Procedure, is never now fatal to a suit." Again (p. 825) the learned Chief Justice says: "the lower Court has found in this case, that all "the four Plaintiffs were partners in the concern, "and that the Defendants contracted with all "jointly." It is to be observed that there were other members of the family who had an equal family interest in the profits of the business, but it was not suggested that they should be joined as Plaintiffs or that they were to be treated as partners in the firm of managing members. In the present case, however, the Defendants were originally sued by all the partners or persons with whom they had made their contract, and therefore they cannot avail themselves of Ramsebuk's case as an authority in their favour.

The same observations apply to the case of *Imam-ud-din* v. *Liladhar* (I.L.R. 14 All., p. 524). There the decision simply was that, except in the case of an assignment by the other surviving partner, it is not competent to one only of two or more surviving partners to sue for a debt due to the firm.

The decision in the case of *Alagappa Chetty* v. *Vellian Chetty* (I.L.R. 18 Mad. 32), cited by the Respondents, may be supported on the ground that the single Plaintiff in that case was not shown to be the managing member of the family

or to be the only partner or proprietor of the business with which the litigation was concerned.

Their Lordships think, however, that the proposition there laid down to the effect that the manager cannot sue without joining all those *interested* with him, if literally construed, goes too far.

In the opinion of their Lordships, the original Plaintiffs in this case were entitled, as the sole managers of the family business, to make, in their own names, the contracts which gave rise to the claim, and that they properly sued on such contracts without joining the other members of the family.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be allowed; that the Decree of the High Court should be reversed with costs, and that of the Subordinate Judge restored.

The Respondents will pay the costs of the Appeal.

In the Privy Council.

KISHEN PARSHAD AND OTHERS

v.

HAR NARAIN SINGH AND OTHERS.

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