

(1928) 07 CAL CK 0064
In the Calcutta High Court

Purna Chandra Khan and Another

APPELLANT

Vs

Nalini Kanta Khan and Others

RESPONDENT

Date of Decision : 30-07-1928

Acts Referred:

Citation : AIR 1928 Cal 741

Judgement

1. The two persons who are now the respondents before us brought a suit for recovery of rent from the defendants in respect of some lands which they hold and which belong to a village deity called Shib Thakur. The two original plaintiffs claimed to be collecting shebait's of the Thakur and said that they were chosen as the persons who were entitled in the name of the village community to realize the rent payable to the Thakurs. The entire village community was the shebait of the Thakur and they had appointed these two plaintiffs for collecting rent due to the Thakur. The community included the present defendants also. The rent was claimed from the defendants at Rs. 25-8-0 a year. The defendants admitted it to be Rs. 14-4-0 a year. Both the Courts below have believed the plaintiffs' evidence and given a decree against the defendants. Some time after the institution of the suit 18 villagers applied to be added as plaintiffs, and they were so added. These added plaintiffs did not take any exception to any statement of the plaintiffs in the trial Court; but some of them gave evidence in support of the defendants. In the appellate Court they filed a petition admitting the defendants' case and the rate of rent mentioned by them.

2. It is argued in this appeal on behalf of the defendants that some of the plaintiffs having supported the defendants' case, the original plaintiffs have lost their representative character and are unable to maintain the suit under Order 1, Rule 8, Civil P.C.; and in support of this reliance has been placed on *Harkisan Das v. Chhaganlal Narsi* [1916] 40 Bom. 158. In that case some persons of the case of *Banias* brought a suit against the defendants for accounts and for recovering from them the amount as might be found due. It was found that the meeting at which the plaintiffs said that they were authorized to institute the suit was irregularly convened. The plaintiffs attempted to prove subsequent acquiescence

of the caste members of their proceeding with the suit. This evidence was regarded by the Court as valueless. On these facts the learned Judges held that the plaintiffs could not represent nor sue on behalf of those numerous members, of the community on whose behalf they purported to have brought the suit as they were in diametrical opposition to them in the controversy. The facts of that case are not similar to those of the present one. There is no denial in this case that the plaintiffs were appointed collecting shebait by the village community. Their right to proceed with the suit was not as a matter of fact seriously challenged. After the suit was brought it was easy enough for any defendant to get some member of a large-community whom the plaintiffs represent to side with him. But that does not take away the representative character of the plaintiffs at the institution of the suit. It is not necessary to consider the ratio of the Bombay case; but on a plain reading of Rule 8, Order 1, it will appear that the necessary conditions are that there should be numerous persons having the same interest in one suit and some of them has obtained the permission of the Court to sue on their behalf. If the contention of the appellant be accepted, namely that when some persons out of the numerous persons whose interest is common in the suit subsequently side with the defendants (and it should be noticed that the defendants are also some members of the community) it will be almost impossible to continue any representative suit for it is never difficult for a party to win over on his side some of the members of the class on whose behalf the suit is brought. This objection is therefore overruled.

3. Then it is argued that as some of the plaintiffs have accepted the defendants' case no decree should have been passed in the suit. But the 18 added plaintiffs were added five months before the hearing of the suit; there was no amendment of the plaint and they did not take any action in the matter. Two of them only gave their evidence in the trial Court in favour of the defendants. But in the appellate Court they filed a petition supporting the defendants. We do not think that there was any change; in the constitution of the suit.

4. The last point taken is with reference to a certain document which was executed by one of the defendants cosharer stating the rent as Rs. 14-4-0. One of the plaintiff's witnesses was a witness to that document. There is no question of law connected with this point as the Court of appeal below has refused to give much importance to this document.

5. The appeal fails and is dismissed with costs.