APPELLATE CIVIL.

Before Mukerji and Roy JJ.

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March 31

HARENDRA NATH SINGHA RAY

v.

PURNA CHANDRA GOSWAMI.*

Pleading—Parties—Joinder of parties—Joinder of causes of action—Civil Procedure Code (Act V of 1908), O. I, rr. 1, 3, O. II, r. 3.

A plaintiff is entitled to join persons as co-defendants against whom he has different causes of action in cases where common questions of law and fact are involved.

Order I, rules 1 and 3 of the Code of Civil Procedure deal with joinder of causes of action as well as joinder of parties.

The English case law on the points reviewed.

APPEAL from Appellate Order by one of the defendants.

This appeal arose out of a suit for possession and *wasilat* against five defendants. Defendants Nos. 1, 2 and 3 appeared and all took the objection that the suit was bad for multifariousness. The Subordinate Judge, who tried the suit, held it to be so and put the plaintiff to election under Order I, rule 2 of the Code of Civil Procedure. The plaintiff, however, did not avail himself of the permission to alter the plaint. The suit was then dismissed.

The plaintiff appealed before the District Judge. He held that the suit was maintainable and remanded it to the primary Court for trial on the merits.

* Appeal from Appellate Order, No. 231 of 1926, against the order of J. Menair, District Judge of Nadia, dated March 20, 1926, reversing the order of Moulvi Osman Ali, Subordinate Judge of Nadia, dated Nov. 24, 28, 1924

Thereupon, defendant No. 2 preferred this appeal in the High Court.

Babu Sitaram Banerji (with him *Babu Bijay Prasad Singha Roy*), for the appellant. The plaint as framed is in contravention of the provisions of Order I, rules 1 and 3 of the Code of Civil Procedure. The nature of the reliefs claimed in respect of the different properties in suit may be the same; but, the causes of action are different in different cases, and it cannot be said that common questions of law and fact arise in regard to the different causes of action, without which such joinder is absolutely fatal to the frame of the suit: *Ramendra Nath Roy* v. *Brajendra Nath Dass* (1). Further, the plaintiff has sued in different capacities and the causes of action arise on different dates and out of different transactions. Hence, it is really a joinder of different plaintiffs and different causes of action, which is not countenanced by the Code.

Babu Mrityunjay Chatterji, for the respondents. There has been no such misjoinder in this case as would be fatal to the suit. My friend has apparently lost sight of the clear wording of Order I, rule 1, which speaks not merely of the same act or transaction, but of a series of acts or transactions. Although the relief claimed in respect of the different properties do not arise out of the same act or transaction, they do arise out of the same series of acts or transactions so as to permit of a joinder as contemplated by the said rule. The plaintiff's right to relief arises out of a series of transactions, for which, if he were relegated to different suits, the same questions will have to be gone into and adjudicated over and over again, and the very object of the Legislature, viz.,

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avoidance of a multiplicity of suits would be frustrated. There is no question of prejudice to the defendants and the balance of convenience is certainly in favour of one suit. The case cited by my friend (1) is clearly distinguishable.

Babu Sitaram Banerji, in reply.

Cur. adv. vult.

MUKERJI J. The plaint in this suit relates to five items of properties,—which for the sake of convenience may be called A, B, C, D and E. The plaintiff claims to be the reversionary heir of one Rashbehari Goswami. He also claims to be the *shebait* of the deity Nandadulal Thakur, installed by the ancestors of the said Rashbehari Goswami, on the ground that, according to the rule and practice prevailing in the family, from the time of his ancestors, the *shebaitship* has all along vested in the heirs according to the law of inheritance. The plaint states that Rashbehari Goswami left a widow Tarini Debi, and one Susil Kumar *alias* Sachindra, whose widow is the defendant No. 1, had set up a claim that he had been adopted by her as her son. The plaintiff seeks to have his title declared as owner in respect of properties B, C, D and E, and the title of the deity Nandadulal Thakur to property A and asks for recovery of possession of properties B, C, D and E as such owner and of property A as such *shebait*. According to the plaint, properties A and B were in the possession of the defendant No. 2, who claims to have obtained the same from Tarini Debi and Sachindra, by a conveyance and a lease respectively, property C is in the possession of the defendant No. 3, property D is in the possession of the defendant No. 4 and property E in the possession of the defendant No. 5. It is alleged in the plaint that the three last mentioned

(1) (1917) I. L. R. 45 Calc. 111.

defendants were in collusion with each other and with the defendant No. 1.

The Subordinate Judge held that the suit, in the form in which it was laid, was not maintainable. He gave the plaintiff an opportunity to elect as to how he would proceed with the suit and against which of the defendants; and on the plaintiff not having availed of the opportunity, he dismissed the suit.

The District Judge held on appeal that the suit was maintainable and remanded it for trial on the merits. The defendant No. 2 has then preferred this appeal.

The question of maintainability of the suit was dealt with by the Courts below from the point of view of O. I, r. 1, O. I, r. 3, and O. II, r. 3, C.P.C. The Subordinate Judge held that all the three rules have been contravened, while the District Judge has held that none of them has been infringed.

As regards properties B, C, D and E, it is clear that the plaintiff seeks to sue in his individual capacity and recover possession of the properties on the death of the widow, from the defendants Nos. 2 to 5 who, under a transfer from the widow and the son said to have been adopted by her or in collusion with the latter's widow, are in possession thereof. Property A belongs to the deity Nandadulal Thakur and it is in the possession of the defendant No. 2, who claims to hold it as transferee from the widow and the said adopted son.

Order I, rule 1 and Order I, rule 3, C. P. C., are in practically the same terms. They correspond to a part of Order XVI, rule 1 and to Order XVI, rule 4, respectively, of the English rules. Before 1896, this part of Order XVI, rule 1 ran in these words: "All "persons may be joined as plaintiffs in whom the right "to any relief claimed is alleged to exist, whether

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"jointly, severally, or in the alternative". In 1896 it was amended and as amended it runs thus, "All "persons may be joined in one action as plaintiffs in "whom any right to relief in respect of or arising out "of the same transaction or series of transactions is "alleged to exist, whether jointly, severally or in the "alternative, where if such persons brought separate "actions any common question of law or fact would "arise". Rule 4 of Order XVI stands as before in these words: "All persons may be joined as defend-"ants against whom the right to any relief is alleged "to exist whether jointly, severally or in the alternat-"ive". Two matters must now, upon the authorities, be regarded as well settled. *First*, Order XVI of the English Rules, though headed "parties" only, deals not only with joinder of parties but also joinder of causes of action [See the cases referred to in *Ramendra Nath Roy* v. *Brajendra Nath Dass* (1) in the judgment of Woodroffe J. at p. 123 and of Mookerjee J. at p. 132]: and *second*, though rule 4 was not amended, the alteration of rule 1 alters the effect of rule 4, and whatever construction is placed on rule 1 ought now to be applied also to rule 4. [*Oesterreichische Export A. G.* v. *British Indemnity Insurance Company, Limited* (2) *In Re Beck* (3)] and that a plaintiff is entitled to join as co-defendants persons against whom he has different causes of action in cases where common questions of law and fact are involved: *Payne* v. *British Time Recorder Company, Limited* (4). It follows therefore that under rule 3 of Order I, C. P. C., which, unlike the English rule 4 of Order XVI has been amended and brought on the lines of rule 1, Order I, C. P. C., there is greater reason for interpreting it in that way. As regards the joinder of

(1) (1917) I. L. R. 45 Calc. 111.
(2) [1914] 2 K. B. 747, 756.
(3) (1918) 87 L. J. Ch. 335.
(4) [1921] 2 K. B. 1.

defendants, if the plaintiff's right to relief is in respect of, or arises out of, the same act, transaction or series of acts or transactions, whether it exists jointly, severally or in the alternative, all the defendants could be joined in one action, provided that if separate suits were brought against such persons any common question of law or fact would arise. So also, as regards the joinder of plaintiffs.

It has been repeatedly pointed out by the House of Lords that although the decisions since the amendment of Order XVI, rule 1, the effect of which was to widen its language, have not been always consistent, nor wholly satisfactory, still the more recent decisions have tended in the right direction, namely to show an increasing tendency to give effect to the obvious purpose of the Rule. In *Drincqbier* v. *Wood* (1), Byrne J. pointed out that "transaction" was not confined to something taking place between two parties In *Stroud* v. *Lawson* (2), Smith L. J. said, "According "to the terms of the rule the plaintiff in this case "cannot join the two causes of action which he is "putting forward in different capacities, unless he can "show that they both arise out of the same transaction. "It is not enough for him to show that, if separate "actions were brought, 'a common question of law or "fact would arise,' for those words do not apply, unless "the right to relief in each case arises out of the same "transaction". Chitty L. J. in the same case observed: "There are, therefore, as I have said, in reality two "separate plaintiffs suing in respect of two separate and "distinct causes of action in this case. The question "then arises whether both the causes of action arise "out of the same transaction within the meaning of "Order XVI, r. 1..... It is necessary that both these "conditions should be fulfilled, that is to say, that the

(1) [1899] 1 Ch. 393. (6) [1898] 2 Q. B. 44.

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"right to relief alleged to exist in each plaintiff should "be in respect of or arise out of the same transaction, "and also that there should be a common question "of fact or law, in order that the case may be within "the rule. . . . I do not deal with the words 'series "of transactions' because they were not relied upon "by the plaintiff's counsel". While Vaughan Williams L. J. said, "I do not, however, understand "that by the new rule it was intended to prevent the "joinder of different causes of action under it. On "the contrary I understand its object to be to facili- "tate such joinder, and to allow plaintiffs to join "different causes of action where under the old rules "as interpreted in *Smurthwaite* v. *Hannay* (1) by "the House of Lords they could not do so..... I "do not think that the rule means that the whole of "a transaction must be involved in each of the causes "of action joined. I think that, if there was a transac- "tion or series of transactions in respect of which "one plaintiff was interested up to a certain point, and "the other plaintiffs were interested, not only up to "that point, but in respect of the entire transaction or "series of transactions from beginning to end, under "this rule they might join their separate causes of "action in one action, because there would be one "transaction or series of transactions in respect of "which the various plaintiffs all claimed a right to "relief". That the rule deals with joinder of causes of action as well as joinder of parties is now well settled [See *Bullock* v. *London General Omnibus Company* (2); *Compania Sansinena de Carnes Congeladas* v. *Houlder Brothers & Co., Limited* (3); *Times Cold Storage Company* v. *Lowther & Blankley* (4); *Oesterreichische Export A. G.* v. *British*

(1) [1894] A. C. 494.
(2) [1907] 1 K. B. 264, 271-2.
(3) [1910] 2 K. B. 354, 355.
(4) [1911] 2 K. B. 100, 107.

Indemnity Insurance Company, Limited (1). In *Markt & Co.* v. *Knight Steamship Company, Limited* (2). Fletcher Moulton L. J. while pointing out the distinction between this rule and that which relates to a representative suit, said, with regard to this rule: "This makes it clear that (subject to the "control of the Court) persons can unite as plaintiffs "though seeking individual relief in cases where the 'investigation would to a great extent be identical 'in each individual case. The policy of the rule is "to avoid needless expense where it can be done "without injustice to any one. And it carries out its "object". The question of joinder of plaintiffs or defendants and the meaning of Rule XVI, rr. 1 and 4 have been considered lately by the Court of Appeal (Lord Sterndale, M. R. Warrington L. J. and Scrutton L. J.) in *Payne* v. *British Time Recorder Company, Limited* (3), and it has been said: "Broadly "speaking, where claims by or against different parties "involve or may involve a common question of law "or fact bearing sufficient importance in proportion to "the rest of the action to render it desirable that the "whole of the matters should be disposed of at the "same time the Court will allow the joinder of "plaintiffs or defendants, subject to its discretion as "to how the action should be tried."

This is a good working rule for practical purposes and, applying it to the present case, it seems to us clear that the action as framed is justified by Order I, rule 1 and rule 3 of the Code of Civil Procedure. Looking at the matter, however, from the point of view of Order I, rule 2, we are of opinion that the trial of the suit as laid is likely to be somewhat embarrassing, especially as some of the questions that

(1) [1914] 2 K. B. 747, 752. (2) [1910] 2 K. B. 1021, 1037.
(3) [1921] 2 K. B. 1.

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will arise so far as property A is concerned, will have no bearing upon the claim as regards properties B, C, D, and E and also because the question of costs in so far as the deity is concerned will arise, which, if possible, must be kept separate from these which the plaintiff will incur or be entitled to recover in his personal capacity.

We, accordingly, set aside the orders passed by both the Courts below and direct that the plaint be treated as comprising two suits, one at the instance of the plaintiff as *shebait* of the deity Nandadulal Thakur in respect of property A and the other at the instance of the plaintiff in his personal capacity in respect of the properties B, C, D, and E, and the two suits be separately tried.

We make no order as to costs in this appeal.

ROY J. I agree.

S. M. *Appeal allowed.*