

## ORIGINAL CIVIL.

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Before Panckridge J.

VICTOR DAY

v.

NISSIM AARON JUDAH.\*

1935  
Dec. 17.

*Suit by woman—Security for costs—Code of Civil Procedure (Act V of 1908), O. XXV, r. 1(3).*

Order XXV, r. 1(3) has no application to a suit where only one of several plaintiffs is a woman.

Application by the defendant asking that the plaintiffs do give security for the payment of all costs incurred and likely to be incurred by the defendant.

The facts of the case and arguments of counsel appear fully from the judgment.

*S. C. Bose* for the defendant.

*B. C. Ghose* for the plaintiffs.

PANCKRIDGE J. This is an application on behalf of the defendant for an order under O. XXV, r. 1(3) of the Civil Procedure Code that the plaintiffs do within a time to be fixed by the Court give security for the payment of all costs incurred and likely to be incurred by the defendant.

There are two plaintiffs: a minor, who is described as "Victor Judah, *alias* Victor Day," and his mother, Elizabeth Day.

The story in the plaint is that the infant plaintiff is the illegitimate son of the defendant by the

\*Application in Original Suit No. 1033 of 1935.

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female plaintiff, and that in January, 1935, the defendant promised to make a settlement of Rs. 30,000 for the future maintenance and education of the infant plaintiff by paying that sum to the female plaintiff, together with all arrears within a month thereafter, and to pay the future maintenance of the infant plaintiff at the rate of Rs. 100 a month. On this basis the plaintiffs pray for a decree for Rs. 30,000 and for Rs. 10,000, the latter sum being by way of arrears of maintenance from June, 1926 to May, 1935.

The plaintiffs endeavoured to attach certain funds belonging to the defendant before judgment, but that application was unsuccessful and was dismissed with costs.

I have first to decide whether the conditions are such that I am entitled, if I think the circumstances warrant it, to make an order under O. XXV, r. 1(3). With regard to r. 1(1) it is clear that an order for security can only be made if the sole plaintiff fulfils or all the plaintiffs, if there are more plaintiffs than one, fulfil the conditions prescribed by the order; that is to say, if one of the plaintiffs resides within the limits of British India, or if, although they all reside out of British India one of them possesses sufficient immovable property within British India, no order for security can be made.

Mr. S. C. Bose points out that sub-r. (3) is not so explicit. Sub-rule (3) merely says that the order for security can be made on the application of any defendant in a suit for the payment of money in which the plaintiff is a woman, if the Court is satisfied that such plaintiff does not possess any sufficient immovable property within British India. It has not been urged that either of the plaintiffs in fact possesses immovable property within British India.

Mr. B. C. Ghose contends that the rule cannot apply in a case like the present where there are more plaintiffs than one, and only one of them is a woman. He admits it is possible that by analogy the rule may be applicable, where there are more plaintiffs than one and all are women.

In my opinion, O. XXV imposes an exceptional disability upon plaintiffs and therefore must be strictly construed; it is not to be applied if the circumstances do not clearly come within its purview. I do not think that a suit in which there is a male plaintiff can properly be described as "a suit in which the plaintiff is a woman". I notice that the order can be made on the application of any defendant, but the part of the rule which deals with the plaintiff does not say "in which any plaintiff is a woman", but "in which the plaintiff is a woman". I fully appreciate the argument that if the order is construed as I think it ought to be construed, it may give an opportunity to an unscrupulous female plaintiff to join a male plaintiff with her, who has really no interest in the suit, for the purpose of avoiding the disabilities of O. XXV. Possibly, in such a case it may be open to the defendant to get rid of the male plaintiff by having him removed from the record on the ground that the plaint does not disclose that he has any cause of action against the defendant; however, that is not a point I am called upon to decide.

Another difficulty in reading the order in the way the defendant asks me to do, arises from the provisions as to what is to happen if there is default in furnishing security. Under r. 2(1), if the security is not furnished within the time fixed, the Court shall make an order dismissing the suit, unless the plaintiff or plaintiffs are permitted to withdraw therefrom. The language on the face of it applies to the suit as a whole, and the form of the summons bears this out because it asks that an order for security be made

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against both the plaintiffs. In his argument, however, the defendant's counsel has conceded that no order can be made as against the male plaintiff, and he has also conceded that what he calls the female plaintiff's suit is the only suit that can be dismissed under r. 2(1). I see very great difficulty in making an order which would have the effect of dismissing the suit, in so far as it is the female plaintiff's suit, and permitting it to continue, in so far as it is the male plaintiff's suit.

In these circumstances I think O. XXV, r. 1(3) has no application and the summons must be dismissed with costs. Certified for counsel.

*Application dismissed.*

Attorney for defendant: *P. C. Ghose.*

Attorney for plaintiffs: *D. Chakravarty.*

S. M.