

ask. No doubt to avoid misconceptions the decree might have been in the terms of the prayer of the plaintiffs themselves, that is to say, the mortgaged property be sold subject to the prior mortgage in favour of the respondents. The proper course to be observed in drawing up a decree is certainly that pointed out in *Lachmi Narain v. Jwala Nath* (1) still, in construing a decree, admissions in the pleadings or in the course of the case should not be ignored and the decree taken as negating any right which was conceded by all parties, with reference to which the Court was not called upon to make any adjudication and in respect of which there was no necessity for the Court to make reference in terms in the decree, provided such a construction does not infringe any statutory provision. It was in consonance with this view that the plaintiffs, the subsequent mortgagees, consented to the sale taking place as applied for by the respondents and the sale-proceeds being applied, in the first instance, towards the discharge of the prior mortgage. The contention of the mortgagors is therefore on the face of it unsustainable.

SRINIVASA
RAO SAREE
v.
YAMUNA-
BEAL
ANMALL.

We dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Boddam.

RAMAKRISHNA RAJU AND OTHERS (PLAINTIFFS), PETITIONERS,

v.

KATTA VENKATASWAMY AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1905.
July 27.

Trustee--Person not entitled obtaining renewal of a promissory note, trustee for rightful owner—Misjoinder of parties.

Where on the death of the payee of a promissory note executed by D, C becomes entitled to the amount, but A obtains a renewal from D in favour of B, a suit will lie by C against D, A and B as defendants to recover on the renewed note, as A and B in obtaining the renewal must be held in law to have become

(1) I. L. R., 18 All., 344 at p. 347.

* Civil Revision Petition No. 594 of 1904, presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of M.R.Ry. T. A. Narasimha Chariar, District Munsif of Bhimavaram, in Small Cause Suit No. 370 of 1904,

RAMA-
KRISHNA
RAJU
v.
KATTA
VENKATA-
SWAMY.

trustees for C. A and B are necessary parties and the suit will not be bad for misjoinder.

The only person entitled to object to C's claim will be D.

SUIT by the plaintiff to recover the amount due on a promissory note executed by the first defendant in favour of the third defendant in renewal of a promissory note executed by the first defendant in favour of the deceased husband of the second defendant. The plaintiff claims that, as the undivided brother of the deceased, the right to recover the amount devolved on him by survivorship.

The Munsif held that the suit was bad for misjoinder and that the plaintiff had no right to sue on the renewed promissory note and dismissed the suit. Plaintiff presented this petition to the High Court under section 25 of Act IX of 1887.

The Hon'ble Mr. V. C. Desikashariar for petitioners.

T. V. Muthukrishna Ayyar for respondents.

JUDGMENT.—On the 10th January 1901, the first defendant borrowed Rs. 20 from an undivided brother of the plaintiffs and the husband of the second defendant. The first defendant gave him an on-demand promissory note for the Rs. 20 and interest at Rs. 1-9-0 per annum. The payee of the note died and behind the backs of the plaintiffs the second defendant got the first defendant to execute a fresh renewal note for Rs. 40, the amount of principal and interest on the 17th April 1903 in the name of the third defendant her mother and she returned the original note to the first defendant.

On the 24th June 1904 the plaintiffs sued all the defendants for the amount of the original loan and interest stating their claim as "for Rs. 44 being the amount due on a promissory note for Rs. 40 executed by the first defendant." The first defendant admitted that he had to pay the plaintiffs and that he was ready to do so. The second and third defendants raised several defences, e.g., limitation, misjoinder, etc. The Munsif dismissed the plaintiff's suit holding that the suit was not maintainable, was barred and was bad for misjoinder.

The plaintiffs' real claim was that the renewal note though in the name of the third defendant was a renewal of the original note which was a note due and payable to an undivided member of the family and therefore due to them on his death. In obtaining the renewal in the name of the third defendant, the second defendant and the third defendant must be taken to have become trustees

for the plaintiffs and that the third defendant was only a benami payee for them and therefore they were entitled to sue. The plaintiffs were entitled to sue the first defendant and to claim that in giving the note in the name of the third defendant he intended to and in law did, in fact, renew the note to whoever was his creditor and that the third defendant's name was intended merely as the ostensible creditor and he alone was entitled to dispute the plaintiff's right to sue him upon it. The second and third defendants were properly joined in order that the plaintiffs might prove their case and that the decree might bind them. There was no misjoinder, nor was the action one that could not be sustained, nor was it barred. I set aside the decree of the District Munsif and remand the case for disposal according to law. Costs will abide and follow the event.

RAMA-
KRISHNA
RAJU
v.
KATTA
VENKATA
SWAMY.

APPELLATE CRIMINAL.

Before Mr. Justice Boddam and Mr. Justice Moore.

SUPPA TEVAN AND OTHERS (PRISONERS), APPELLANTS,

v.

EMPEROR, RESPONDENT.*

1905
July 19.

Penal Code—Act XLV of 1860, s. 193—'Judicial proceeding'—Oaths Act X of 1872, ss. 4, 5—Criminal Procedure Code—Act V of 1898, s. 164—Magistrate empowered to administer oath when taking statements under s. 164 of the Criminal Procedure Code.

A Magistrate taking statements under section 164 of the Code of Criminal Procedure is acting in discharge of duties imposed on him by law and is empowered to administer an oath under sections 4 and 5 of the Oaths Act. An investigation under Chapter XIV of the Code of Criminal Procedure is a stage of a judicial proceeding and a person making on oath a false statement in the course of such investigation commits an offence under section 193 of the Penal Code.

Queen-Empress v. Alagu Kone, (I.L.R., 16 Mad., 421), followed.

IN the course of an investigation under Chapter XIV of the Code of Criminal Procedure, by the Station-house Officer of Bodinayakanur in a case of alleged murder, the Sub-Magistrate of Uthamapalayam, under section 164 of the Code of Criminal

* Criminal Appeals Nos. 142 to 144 and 147 of 1905, presented against the sentences of H. Moberly, Esq., Sessions Judge of Madura, in case No. 3 of the Calendar for 1905.