APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Subrahmania Ayyar, Mr. Justice Davies and Mr. Justice Boddam.

PINAPATI MRUTYUMJAYA AND OTHERS (DEFENDANTS), APPELLANTS.

v.

PINAPATI JANAKAMMA AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1903. February 20, 27.

Civil Procedure Code—Act XIV of 1882, s. 26—Joinder of plaintiffs—Right claimed in the alternative.

The widow and the adopted son of a deceased person joined as plaintiffs in a suit to recover money payable by the defendants to the deceased. The money was undoubtedly due to one or other of them and they were agreed that either should take it. The widow joined as plaintiff because the right of the other plaintiff to sue as adopted son was questioned:

Held, that the suit was not bad for misjoinder of plaintiffs.

Fakirapa v. *Rudrapa*, (I.L.R., 16 Bom., 119), followed; *Linganmal* v. *Chinna Venkatammal*, (I.L.R., 6 Mad., 239), explained.

QUESTION referred to a Full Bench. The case first came before the Chief Justice, and Subrahmania Ayyar, J., who made the following

ORDER OF REFERENCE TO A FULL BENCH.—We refer to a Full Bench the question whether the present suit is bad for misjoinder of plaintiffs.

There is an apparent conflict between the authorities. See *Linganmal* v. *Chinna Venkatammal*(1), *Fakirapa* v. *Rudrapa*(2) and *Haramoni Dassi* v. *Harichurn Chowdhry*(3).

The facts, so far as they related to the question referred, were thus stated by the Sub-Judge:—

"The first plaintiff is the widow of Neelagriva Sastri, while the second plaintiff is the one adopted by the first plaintiff as son of her husband. As the factum and validity of the adoption are disputed by the reversioners, both have joined in bringing this suit. Defendants contend that the suit is bad for misjoinder of plaintiffs,

* Second Appeal No. 1357 of 1901 presented against the decree of I. L. Narayana Rao, Subordinate Judge of Kistna, in Appeal Suit No. 428 of 1900, presented against the decree of S. A. Swaminadha Sastri, District Munsif of Gudivada, in Original Suit No. 98 of 1896.

(1) I.L.R., 6 Mad., 239. (2) I.L.R., 16 Bom., 119. (3) I.L.R., 22 Calc., 823.

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and rely upon the decision in *Linganmal* v. *Chinna Venkatammal*(1). That case is distinguishable from the present case. There, the relief sought for in respect of one plaintiff is different from the relief claimed by the other. The plaintiff and the second defendant in that case were the co-widows of a deceased person. First plaintiff adopted the second plaintiff. If the adoption were to fail, first plaintiff, as one of the two widows, would be entitled to recover one-half of the suit property. On the other hand, if the adoption were to be established, the second plaintiff, as the adopted son of the deceased, would be entitled to recover the whole estate. In the present case, the adoption is set up by both the plaintiffs, and whether it stands or fails, the whole of the suit amount is recoverable by either of them. Here, the infringement of right by the defendants constitutes the cause of action in its restricted sense. The cause of action is the same in respect of both the plaintiffs whose interests are not antagonistic. In the Madras case above referred to, their Lordships found the cause of action to be different, and observed that the words 'in the alternative' used in section 26, Civil Procedure Code, apply 'to cases in which there is a doubt as to who is the person entitled to sue upon the cause of action as in the case cited in the work already quoted as an illustration, viz., that of a sale to an agent in which there may arise a difficulty as to whether the principal or the agent should sue; to cases where parties have different and conflicting interests in the same subject-matter, and an act is committed which gives the same cause of action to either party according to the eventual determination of the Court as to which of the two is entitled to recover.' This passage quoted from the Madras case clearly indicates that, in the opinion of their Lordships, the present suit instituted by the adoptive mother and the adopted son and based upon the same cause of action is sustainable. The cases of *Fakirapa* v. *Rudrapa*(2) and *Haramoni Dassi* v. *Hari Churn Chowdhry*(3) are on all fours with the present case and enable the plaintiffs to maintain this suit under section 26, Civil Procedure Code."

The case came on in due course before the Full Bench constituted as above.

V. Ramesam for appellants.

P. Nagabhushanam for respondent.

(1) I.L.R., 6 Mad., 239. (2) I.L.R., 16 Bom., 119.
(3) I.L.R., 22 Calc., 833.

PINAPATI MRITYUM-JAYA v. PINAPATI JANAKAMMA.

JUDGMENT.—This is a suit for the recovery of money received by the defendants and payable by them to the owner of a certain share. The first plaintiff is the widow of the last admitted owner and the second plaintiff is her adopted son. There is no contest as between them, and it is because of objection taken by the defendants to the title of the second plaintiff as adopted son that they join as plaintiffs to get the money, which is undoubtedly due to one of them, and they are agreed that either shall take it. We are unable to say that in such a case there is a different "cause of action" for each within the meaning of section 26 of the Civil Procedure Code, and there was, therefore no misjoinder, which is our answer to the question. We consider the present case is on all fours with that in *Fakirapa* v. *Rudrapa*(1), and our view agrees in principle with that in *Haramoni Dassi* v. *Harichurn Chowdhry*(2) and that view is not in conflict with the decision in *Lingammal* v. *Chinna Venkatammal*(3) when examined. There the alternative claim of the widow was really on a different cause of action from that of the adopted son. The claim of the adopted son was that of an exclusive owner, while the widow's claim was that of a co-owner, with one of the defendants.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Subrahmania Ayyar, Mr. Justice Davies and Mr. Justice Boddam.

KARATTOLE EDAMANA AND OTHERS (PLAINTIFFS), APPELLANTS, 1903. February 24. April 8.

v.

UNNI KANNAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

Malabar Law—Suit by one of two co-uralans for redemption of mortgage without allegation or proof that the other had been asked to join plaintiff in the suit—Maintainability of suit.

One of two co-uralans may bring a suit to redeem a mortgage without averring or proving that the other uralan had been asked to join as a plaintiff in the suit. *Savitri Antharjanam* v. *Raman Nambudri*, (I.L.R., 24 Mad., 496), distinguished.

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(1) I.L.R., 16 Bom., 119. (2) I.L.R., 22 Calc., 233.
(3) I.L.R., 6 Mad., 239.

* Second Appeals Nos. 1385 and 1386 of 1901 presented against the decree of K. Krishna Rao, Subordinate Judge of South Malabar at Calicut, in Appeal Suit No. 943 of 1900 presented against the decree of V. Ramasastri, District Munsif of Betutnad, in Original Suit No. 481 of 1899.