COMMISSIONER OF INCOME TAX, MADRAS v. ARUNACHALAM CHETTIAR.

COUTTS TROTTER, C.J.

that is clearly laid down in *Coman* v. *Governors of the Rotunda Hospital, Dublin*(1), which has been followed in the subsequent cases, and only the other day in *In the matter of Lakshman Das Narain Das*(2). We think that that principle applies quite clearly to the Indian Act as the Allahabad High Court holds and that the answer to this reference must be that the proceeds derived from the carrying on of this rice mill are assessable to income-tax. The person whom we declare to be assessable and whom we make to pay the costs of this reference including a pleader's fees of Rs. 150 is the manager Arunachalam Chetti.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Krishnan, Mr. Justice Ramesam and Mr. Justice Beasley.

1926, March 24.

C. S. GOVINDARAJA MUDALIAR (PLAINTIFF), APPELLANT,

v.

ALAGAPPA THAMBIRAN AND 11 OTHERS (DEFENDANTS), RESPONDENTS.*

Order I, rule 3, Civil Procedure Code—Separate leases by a temple trustee to several tenants on different dates—One suit by succeeding trustee to set them aside and to recover possession, whether multifarious.

A suit by a receiver of temple properties to set aside a number of leases granted by a previous trustee of the temple of various portions of one block of property to different tenants separately on different dates and to recover the portions thereof so demised from them respectively is not bad for misjoinder of parties and causes of action.

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* Original Side Appeal No. 5 of 1924.

(1) [1921] 1 A.C., 1. (2) (1925) I.L.R., 47 All., 68.

ON APPEAL from the Order of Mr. Justice DEVADOSS, dated 27th September 1923, and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in C.S. No. 539 of 1921.

The facts are given in the judgment.

This Original Side Appeal coming on for hearing, the Court (COUTTS TROTTER, C.J., and RAMESAM, J.) referred the case to a Full Bench, stating the following question of law, viz. :—

"Is a suit brought by a receiver of the temple properties to set aside a number of leases granted by a previous trustee of the temple of various portions of one block of property to different tenants separately on different dates and to recover the portions thereof so demised from them respectively, bad for misjoinder of parties and causes of action?"

ON THIS REFERENCE—

K. S. Krishnaswami Ayyangar for appellant.—The suit is not bad for misjoinder of parties and causes of action. Order I, rule 3, Civil Procedure Code, exactly applies to this case. As I am the present trustee succeeding to all the lands of the temple, there is a unity of title just as in the case of an heir succeeding to a Hindu widow. There is only one cause of action and not several. It is only a question of joinder of parties. The various alienations are only violations of my sole right and I attack all the alienations on some common questions of law and fact. There is no necessity to pray for the avoidance of the leases. A prior limited owner's alienations can be set aside by a full owner in one suit whether the prior owner was a widow, a father, a karnavan or a guardian. See *Nundo Kumar Nasker* v. *Banomali Gayan*(1), *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*(2), *Mahomed* v. *Krishnan*(3), *Abdul* v. *Ayaga*(4), *Byathamma* v. *Avulla*(5), *Dorasami Pillai* v. *Angammal*(6), *Umabai* v. *Vithal*(7), *Parbati Kunwar* v. *Mahmud Fatima*(8), *Kubra Jan* v. *Ram Bali*(9).

(1) (1902) I.L.R., 29 Calc., 871.
(2) (1874) 7 M.H.C.R., 290.
(3) (1888) I.L.R., 11 Mad., 106.
(4) (1889) I.L.R., 12 Mad., 234.
(5) (1892) I.L.R., 15 Mad., 19.
(6) (1908) 18 M.L.J., 484.
(7) (1909) I.L.R., 33 Bom., 293.
(8) (1907) I.L.R., 29 All., 267.
(9) (1908) I.L.R., 30 All., 560 (F.B.).

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K. Krishnamachari (with *V. Narasimha Ayyangar*) for respondents.—The cause of action is not the unity of title, but the illegal alienations as stated in the plaint, which the plaintiff has to avoid before recovering the properties. These are independent causes of action. There is no question common to all these alienations. Some may be good and binding on the trust and others may not. There is no analogy between the cases quoted and the present case. In them the alienor was a limited owner and the plaintiff sued in his independent full right. In this case, the present trustee has no higher rights than the previous one. He is only an agent of the idol. If the previous trustee could not have brought a single suit to set aside the various independent alienations which were made on different dates and under different circumstances the present trustee too cannot *Afzal Shah* v. *Lachmi Narain* (1) holds that a single suit like this is bad for multifariousness. Even if a single suit could be brought to eject various people in possession of various plots, a declaratory suit against several cannot be brought. He distinguished the cases quoted by the appellant.

OPINION.

KRISHNAN, J.

KRISHNAN, J.—The question referred to the Full Bench is whether "a suit brought by a receiver of temple properties to set aside a number of leases granted by a previous trustee of the temple of various portions of one block of property to different tenants separately on different dates and to recover the portions so demised from them respectively, is bad for misjoinder of parties and causes of action."

In a suit brought under section 92 of the Code of Civil Procedure to remove the trustee and to frame a scheme, etc., plaintiff was appointed receiver and was directed to recover the temple properties. The suit properties are held by the various defendants under several leases, all for 99 years granted by the trustee. Plaintiff claims that it was beyond the powers of the

(1) (1918) I.L.R., 40 All., 7.

trustee to grant leases for such a long period and seeks to invalidate them on that ground and to recover the properties ejecting the defendants. Defendants urge, among other pleas, that the alienations are valid in the circumstances alleged by them in their written statements and that in any case, the plaintiff cannot recover possession but only get the term reduced to 21 years or such other period as the trustee was competent to grant. These are two of the questions that arise in the case which are common to all the defendants.

The question referred for our opinion has obviously to be decided on the allegations in the plaint and on the provisions of the Code of Civil Procedure, as it now stands.

The principal rule we are concerned with is Order I, rule 3, which allows the joinder in one suit of a number of defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise. There is a considerable difference between the language of this rule and that of section 28 of the Code of 1882 which was the previous law on the point. The rule is now in accordance with the English Rule R.S.C. Order XVI, rule 4. The older authorities are therefore not of much more force now though they are still useful guides, as Justice DAVAR observes in *Umabai* v. *Bhau Balwant*(1). Though rule 3 in terms applies only to joinder of defendants, it impliedly refers to joinder of causes of action also as held by the learned Judges of the Calcutta High Court in *Ramendra Nath Roy* v. *Brajendra Nath Dass*(2).

(1) (1910) I.L.R., 34 Bom., 358 at 367. (2) (1918) I.L.R., 45 Calc., 111.

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They have referred to the English authorities on the point and as I entirely agree with them it is unnecessary to refer to such authorities again.

Two conditions are necessary to be fulfilled for the application of Order I, rule 3, namely, that the relief claimed should arise from a series of acts or transactions, the word "series" implying that there should be some connexion between them, and that there must be some common question of law or fact arising in the suit. There is nothing in the rule that confines it to a single cause of action. Now it seems to me that both the conditions above stated are fulfilled in the present case. I have already mentioned above the two common questions that arise for decision. There is unity of title in the plaintiff as he claims as the proper present representative of the temple estate to set aside the alleged improper alienations of the previous trustee. The series of transactions impugned are the various 99 year leases granted by the previous trustee. They are all similar and depend for their validity on the powers of that trustee. They form in my opinion a series of transactions within the meaning of rule 3. I think the rule applies to this case and that the suit is not bad for multifariousness. While on the one hand we should not allow the Court to be embarassed by the joinder of a number of totally unconnected controversies in one suit, we should not unduly restrict the scope of the rules regarding the joinder of parties and causes of action, so as to lead to unnecessary multiplicity of suits. If any inconvenience is felt by the joinder of a number of causes of action it is always open to the Court to take action under Order II, rule 6. It may be that the plaintiff can bring a separate suit against each lessee but that is no reason why he should be driven to do so. Order I, rule 3, itself contemplates the possibility of

separate suits. It is desirable where there are common questions of law or fact to decide, that they should be decided in one suit rather than in many to avoid possible conflict of decisions. In the case of several alienations by a single individual which are all alleged to be improper it is better that they should all be before the Court at once to secure a proper decision as to all of them. These are the observations made by the Full Bench in *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*(1), and they are still of value as guiding principles.

The next Madras case referred to is the case *Mahomed* v. *Krishnan*(2). In that case the learned Judges pointed out that in a suit by the junior members of a tarwad to recover a number of tarwad properties improperly alienated by the karnavan, the primary ground of action was the interest vested in the plaintiffs to the whole of the property in suit and that there was unity of title and the claim arose from the same cause of action though there were numerous alienees unconnected with one another holding the various items in suit. This principle has consistently been followed in this Court, and in suits by reversioners, by adopted sons, and by co-parceners for partition, the joinder of any number of alienees is permitted without any objection on the ground of misjoinder.

The same view is taken in Calcutta. In *Nundo Kumar Nasker* v. *Banomali Gayan*(3), following the ruling in *Ishan Chunder Hazra* v. *Rameswar Mondol*(4), it was held that a lessee could bring a single action against his lessor and a number of subsequent lessees from him for ejectment and that it was not bad for misjoinder. The point was again elaborately considered

(1) (1874) 7 M.H.C.R., 290.
(2) (1888) I.L.R., 11 Mad., 106.
(3) (1902) I.L.R., 29 Calc., 871.
(4) (1897) I.L.R., 24 Calc., 831.

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in *Ramendra Nath Roy* v. *Brajendra Nath Dass*(1), where the corresponding rules of the Supreme Court and the English authorities on them are referred to at length. I entirely agree with the view expressed by the learned judges in that case regarding the principle of the applicability of Order I, rule 3.

The case in *Afzal Shah* v. *Lachmi Narain*(2), was cited on the other side. But it seems to me that the scope and effect of Order I, rule 3, has not been properly considered in it. If the case was one of an owner of property suing to eject a number of wholly unconnected trespassers on different portions of his property, as their Lordships say it is on page 11, it would be bad for misjoinder, for it is difficult to bring it under Order I, rule 3. It is in that view quite different from the present case as the defendants here are all lessees holding under similar leases given by the trustee and the plaintiff is seeking to set aside all of them on the same ground.

For the reasons stated above, I would hold that the suit is not bad for misjoinder of parties and causes of action and answer the question referred in the negative. As no other point has been decided by the trial Judge and as, I think, he is wrong in the view he has taken, and, as the parties agree to such a course, I would set aside his order and direct him to proceed with the further trial of the case. The costs of this appeal will be disposed off by the trial Judge in his final decree.

RAMESAM, J.

RAMESAM, J.—This is an appeal from the order of our brother DEVADOSS, J., sitting on the original side. The appellant before us is the plaintiff. He is the Receiver of Sri Komaleswaram temple properties appointed by order of Court, dated the 27th July 1920,

(1) (1918) I.L.R., 45 Calc., 111 (2) (1918) I.L.R., 40 All., 7.

passed in Civil Suit No. 429 of 1916 on the file of the High Court. In that capacity he sues for recovery of certain properties belonging to the temple on the ground that the various leases under which the respective defendants are in possession and which were executed by or in favour of the former trustees are voidable at the instance of the present plaintiff. Defendants 1 and 2 are interested in plot 18. Five other defendants are interested in two plots and defendants 8 and 9 in another plot. A preliminary issue was framed "Is the suit bad for misjoinder of parties and cause of action?" This was first argued. The learned Judge held that the frame of the suit was bad for multifariousness and he passed an order giving leave to the Plaintiff to proceed with the suit against such one of the Defendants as he may choose and withdraw it against the others. The plaintiff appeals.

In *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*(1), it was held that a suit brought against a number of alienees of a deceased member of an undivided family for the recovery of family property illegally alienated by him is not bad for multifariousness. In *Mahomed* v. *Krishnan*(2), the suit was brought by the junior members of a tarwad against the karnavan and his alienees. The plaintiff prayed for the removal of the karnavan, for a declaration that his alienations are invalid against the tarwad and for possession of the property alienated among other reliefs. It was held that the suit was not bad for multifariousness and the earlier case was followed. There were 48 alienations; MUTTUSWAMI AYYAR, J., observed—

"In our judgment, it makes no difference whether the right enforced is that of a co-parcener or a reversioner, for the object in both is to reduce to possession a vested interest as well

(1) (1874) 7 M.H.C.R., 290. (2) (1888) I.L.R., 11 Mad., 106.

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in property illegally alienated as in the property held by the managing member or by the tenant for life. In the view that the primary ground of action is the interest vested in possession as regards the whole of the property in suit, there is a unity of title, and the claim made is one in respect of the same cause of action."

In *Abdul* v. *Ayaga*(1), the same view was again taken, the suit being for a declaration that alienations by the karnavan were not binding on the tarwad. It was said there is no reason why a declaratory suit should be treated differently from a suit for possession inasmuch as the titles to be adjudicated upon were the same in both. In *Byathamma* v. *Avulla*(2), it was held that the suit by a karnavan to recover properties given away by a former karnavan was not bad for multifariousness. So much is this doctrine established in this Court that in Appeal Suit No. 182 of 1896 (unreported) it was held that a reversioner was bound to include all the alienations made by a widow and questioned by him, in one suit so that a second suit would be barred under section 43 of the Civil Procedure Code. This case was considered in *Dampanaboyina Gangi* v. *Addala Ramaswami*(3). BHASHYAM AYYANGAR, J., observed:

"It purports to be based upon a course of decisions in this Presidency in which it was held that a suit relating to various properties in the possession of different defendants who claimed under different alienations made by a widow or by a karnavan or the managing member of a tarwad or a joint Hindu family, is not open to the objection of misjoinder of defendants and of causes of action, when the plaintiff's ground of title to all the properties included in the suit is the same * * * * A person suing for partition of an estate or for an estate which has devolved upon him by inheritance may so shape his plaint as to base it upon a single cause of action, the various defendants being joined as parties in possession of the estate. Further

(1) (1889) I.L.R., 12 Mad., 234. (2) (1892) I.L.R., 15 Mad., 19.
(3) (1902) I.L.R., 25 Mad., 736 at 745.

under section 28, Civil Procedure Code, relating to the joinder of different persons as defendants, it is open to a plaintiff to join as defendants various persons against whom the right to relief is alleged to exist, whether jointly, severally or in the alternative in respect of the same matter. * * * * It would be noted that the phrase "in respect of the same matter" occurring in this section, is wider than the phrase "in respect of the same cause of action" occurring in section 26, Civil Procedure Code, relating to the joinder of different persons as plaintiffs in the same suit. . . . In *Ishan Chunder Hazra* v. *Rameswar Mondol*(1) it was held, following the decision of this Court in *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*(2) and *Mahomed* v. *Krishnan*(3) that "in a suit for ejectment against several defendants who set up different titles to various parts of the land claimed, there was only one cause of action" and it was observed that "in England in an action in ejectment all the parties in possession are joined." Under the English Law, the persons to be made defendants in an action in ejectment, i.e., to be named in the writ, are all the persons in possession of the land sought to be recovered; and the persons who have a right to defend an action of ejectment are not only the persons named in the writ, but also any person who is in possession by himself or his tenant (Rules 112 and 113; pp. 494–98; Dicey's "Parties to an Action," Edition of 1870). As to cases in which different persons are in possession of different portions of the property, the rule laid down in Cole on 'Ejectment' (p. 76) is as follows:— 'When the tenements claimed and the tenants thereof are numerous, it is frequently advisable to bring two or more distinct ejectments rather than one action against all of them for the whole of the property. The exercise of a sound discretion and judgment on this point may sometimes save much trouble' * * * * * * * * *

Whether the action is based only upon one cause of action or not will depend upon the frame of the plaint in a suit for ejectment and not upon the answers to the suit, which may be set up by the different defendants. Even if the plaint is not based upon one and the same cause of action, yet if the relief that is claimed severally against the different defendants be in respect of the same matter, section 28, Civil Procedure Code, will save it from the objection of multifariousness."

(1) (1897) I.L.R., 24 Calc., 881. (2) (1874) 7 M.H.C.R., 250.
(3) (1888) I.L.R., 11 Mad., 106.

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In my opinion, the above sentences quoted from *Dampanaboyina Gangi* v. *Addala Ramaswami*(1) though strictly *obiter dicta*, as the point in that case was the applicability of section 43 (now Order II, rule 2), lay down the correct principle on the question of multifariousness. *Indar Kuar* v. *Gur Prasad*(2), *Mazhar Ali Khan* v. *Sajjad Hussain Khan*(3), *Ishan Chunder Hazra* v. *Rameswar Mondol*(4) and *Nando Kumar Nasker* v. *Banomali Gayan*(5) are other decisions laying down the same principle. In *Ishan Chunder Hazra* v. *Rameswar Mondol*(4), the Court observed—

> "The cause of action namely, what the plaintiffs were bound to prove in order to succeed was that they were the reversioners of Brahmamayi in regard to this property and that the claim was not barred by limitation. The defendants then could raise any answer they thought fit to get rid of the claim; but the cause of action was one."

Whatever difficulty one may feel as to whether the cause of action in such cases is the same, certainly it ought to be held that they relate to the same matter as pointed out in *Dampanaboyina Gangi* v. *Addala Ramaswami*(1). The same remarks apply to *Nando Kumar Nasker* v. *Banomali Gayan*(5). All these cases were followed in *Parbati Kunwar* v. *Mahmud Fatima*(6). Now it may be said and there is some force in the contention that a mere unity of title is not enough to save a suit from the mischief of multifariousness. For instance, if several properties belonging to *A*, the owner of a land, have been trespassed upon by different persons at different times, can it be said that *A* may bring one suit in ejectment against all the trespassers. I find some difficulty in saying that a single suit will lie (vide

(1) (1902) I.L.R., 25 Mad., 736. (2) (1889) I.L.R., 11 All., 33.
(3) (1902) I.L.R., 24 All., 358.
(4) (1897) I.L.R., 24 Calc., 831. (5) (1902) I.L.R., 29 Calc., 871.
(6) (1907) I.L.R., 29 All., 267.

Afzal Shah v. *Lachmi Narain*(1) cited by DEVADOSS, J.). But where the unity of the title in the plaintiff is coupled with the fact that his predecessor was a limited owner or a person under a disability, such as a minor or the idol of a temple, and the alienations were made by a guardian or the trustee of the temple, such a fact makes the plaintiff's suit one in respect of the same matter. It may be that in the trial of such a suit the total income of the property vested in the widow, the minor, the idol or the manager of a joint family or a tarwad has to be considered and all the circumstances of the owner or the institution have to be taken into account in judging the question of the justifying necessity in considering the various alienations sought to be impeached. The possibility of the necessity of such an enquiry is probably the unifying element which makes the suit relate to the same matter. The case of the trustee of a temple was always regarded in several respects similar to that of a guardian of an infant heir or manager of a joint family (see for instance *Konwar Doorganath Roy* v. *Ram Chunder Sen*(2). Mr. Krishnama Achariyar appearing for the respondents contended that, though this principle is correct in a suit for possession by a reversioner, it will not apply in a suit for declaration. I do not see any reason why there should be a distinction made between a suit for declaration and a suit for possession. The case in *Abdul* v. *Ayaga*(3) already cited is a case where the plaintiff sued for declaration only. The present Civil Procedure Code though it does not use the words "the same matter" as in the Code of 1882, refers to a transaction or a series of transactions, the object being to widen the scope of the cases permitting joinder. In A.S. No. 78 of 1911 (unreported) a suit by the trustee

(1) (1918) I.L.R., 40 All., 7. (2) (1877) I.L.R., 2 Calc., 341 (P.C.).
(3) (1889) I.L.R., 12 Mad., 234.

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of a temple to set aside two alienations of the former trustee was held not to be bad for multifariousness and the decree was reversed and the suit remanded by SANKARAN NAYAR and SPENCER, JJ.).

RAMESAM, J.

None of the above authorities have been cited before the learned Judge. He relied upon a passage in *Seturatnam Aiyar* v. *Venkatachela Goundan*(1). No question of multifariousness was raised in the case. Before the Privy Council the plaintiff himself complained that evidence relating to one item should not have been used against him for other items. The Privy Council observed that he himself was responsible for the joinder and ought not to complain. I therefore hold that the suit is not bad for multifariousness. The order will therefore be reversed and the suit sent back for disposal according to law and I agree with my learned brother KRISHNAN, J.'s order as to costs.

BEASLEY, J.

BEASLEY, J.—I have read the judgments of my learned brothers and am in entire agreement with them, and have nothing further to add.

A. Kandaswami Mudaliyar, attorney for appellant.

N.R.

(1) (1920) I.L.R., 43 Mad., 567 (P.C.).