

## APPELLATE CIVIL.

*Before Mr. Justice Tottenham and Mr. Justice O'Kinealy.*

MADAN MOHUN LAL (PLAINTIFF) v. F. HOLLOWAY, BY  
HIS AM-MOOKHTEAR L. G. CROWDY, 1ST PARTY, AND OTHERS 2ND PARTY  
(DEFENDANTS.)<sup>\*</sup>

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January 29.

*Joinder of parties—Form of suit—Joinder of defendants—Joinder of causes of action—Civil Procedure Code, 1882, s. 28.*

*A* leased certain lands to *B* for a term of seven years commencing with the year 1288 Fasli (19th September 1880). On the 23rd October 1883, *A* sold the lands to *D*, who, under his purchase, became entitled to the rents of the lands from the commencement of the year 1291 Fasli (17th September 1883). When some of the instalments of the rent for the year 1291 Fasli became due, *D* applied for payment thereof to *B*, who informed him that he had paid the whole of the rent for the year 1291, in advance, to *A* on the 21st May 1883. *D* then sued *A* and *B* for the rent due, praying a decree for rent against *B*, and in the alternative, for a decree against *A* if it should turn out that *B*'s allegation of payment was correct. The lower Courts found that *B* had paid *A* in good faith, and they dismissed the suit as against him. They also dismissed the suit as against *A* on the ground that the claims against *A* and *B* could not be joined in one suit.

On appeal to the High Court: *Held*, that the frame of the suit was unobjectionable, and that on the facts found by the lower Courts *D* was entitled to a decree against *A*.

THIS was a suit by the purchaser of certain lands against his vendor and against a Mr. Holloway who had, on the 2nd October 1880, taken a lease of the land from the vendor for a term of seven years (from 1288 to 1294 Fasli, both inclusive) at a yearly rent of Rs. 2,700. The plaintiff purchased the lands on the 25th October 1883, and under the purchase he was entitled (as between himself and his vendor) to receive from Mr. Holloway the rent for the year 1291 Fasli (commencing from the 17th September 1883). In the early part of December 1883, the plaintiff wrote to Mr. Holloway telling him of his purchase, and requesting payment of the instalments due for the months of Assin and Kartick 1291 (from 17th September 1883 to 14th November

<sup>\*</sup> Appeal from Appellate Decree No. 1904 of 1885, against the decree of F. W. Badcock, Esq., Officiating Judge of Bhagulpur, dated the 13th of June 1885, affirming the decree of Baboo Saroda Prosad Chatterji, Second Subordinate Judge of that District, dated the 7th of January 1884.

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1883, both inclusive). On the 6th December 1883, Mr. Holloway replied, stating that the rent for the year 1291 had been paid in advance to the vendor on the 21st of May 1883. The plaintiff then wrote to the vendor requesting him to hand over the money so paid to him, but to this letter he received no reply.

On the 7th March 1884 the plaintiff brought the present suit for the instalments of rent due for Assin, Kartick, and Pous, 1291, praying as against Mr. Holloway that in default of payment the latter might be ejected from the lands under the provisions of s. 52 of Bengal Act VIII of 1869, and in the alternative that the vendor-defendant might be ordered to satisfy the plaintiff's claim. The plaint charged that the payment alleged by Mr. Holloway was a collusive transaction entered into for the purpose of defrauding the plaintiff.

Both the lower Courts found that the rent for 1291 Fashi had been paid as alleged by Mr. Holloway, and that the payment was made *bond fide*; they therefore dismissed the suit as against him. They also dismissed the suit as against the vendor, on the ground that the claim against him was of an entirely different nature from that against Mr. Holloway, and that both claims could not be joined in one suit. The plaintiff appealed to the High Court.

Mr. *Twidale* for the appellant.

No one appeared for the respondent.

The judgment of the Court (TOTTENHAM and O'KINEALY, JJ.) was delivered by

TOTTENHAM, J.—In this case there is no appearance on behalf of the respondent.

We are of opinion that the judgment of both the Courts below, refusing to give the plaintiff relief against the defendant No. 2, is erroneous. The ground alleged by the Courts below for dismissing the suit as against the defendant No. 2 was that the claim against him was of a different nature from that against the defendant No. 1, and that it was not clearly set out in the plaint.

The plaintiff was the purchaser of the property in suit from the defendant No. 2, and on coming into possession he brought

this suit against the defendant No. 1 for arrears of rent due partly for a period before his incumbency and partly for a subsequent period. He sued both the tenant and his vendor, because the defendant No. 1, on demand for rent being made, had alleged that he had already paid rent in advance to the defendant No. 2, and the defendant No. 2 omitted to take any notice of the plaintiff's reference to him.

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Upon trial the Courts below were satisfied that the defendant No. 1 had *bond fide* paid the arrears of rent claimed in advance to the plaintiff's vendor, and that he could not be held liable for that amount to the plaintiff. But as the suit was for rent, the Courts below were of opinion that as against the defendant No. 2 the claim as for damages could not be entertained.

We think that s. 28 of the Code of Civil Procedure authorises the Court to give relief in cases like the present. That section says that "all persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter." In this case relief was claimed against these two defendants alternatively in respect of the same matter, namely, a certain portion of the rent for 1281 Fasli. As it was not due by the actual tenant, but was found to have been received by the tenant's previous landlord, and to be due to the plaintiff, we think that the Courts below should give a decree for that amount. We set aside the decree of the lower Courts dismissing the suit as against the defendant No. 2, and send the case back for adjudication of the question at issue between him and the plaintiff.

The appellant is entitled to the costs of this appeal as against the defendant No. 2.

P. O'K.

*Appeal allowed.*