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of a mutation of names in the registers would be equivalent to giving possession. I asked him to point out any law from which such a proposition could be inferred, and he failed to do so. The gift, it appears to me, was perfect as soon as the deed was executed and handed over with the papers to the donee. The mutation of names was merely a thing that would follow on the perfection of the title, and does not in itself in any way go to make the title or form part of the title. In my opinion Abdul Rahman did comply with all the requirements of the Muhammadan Law by making the deed and handing it over to his wife. In connection with this, I may also refer to Baillie's *Digest of Muhammadan Law*, p. 517 :— "The confusion that invalidates a gift is one that is original, not supervenient, as, for instance, when one has given the whole of a thing, and subsequently revokes a half or other undivided share of it, or a right is established to a half or other undivided share of it, the gift is not invalidated as to the remainder." In this particular case those shares were definite and ascertained, and did not require any further separation than was already effected upon the death of the sole owner.

Under these circumstances, I think the judgment of the Court below is right, and the appeal must be dismissed with costs.

BRODHURST, J.—I entirely concur with the learned Chief Justice in dismissing the appeal with costs.

Appeals dismissed.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

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KISHNA RAM (PLAINTIFF) *v.* RAKMINI SEWAK SINGH AND OTHERS (DEFENDANTS).*

Joint liability—Contribution— Joint tort-feasors—Misjoinder—Civil Procedure Code, s. 44 Rule b.

An objection to the attachment and sale of certain immoveable property, raised by one who claimed to have purchased the same at a sale in execution of a prior decree, was disallowed on the ground that, under the prior decree, the rights of one only of the present judgment-debtors had been sold and purchased by the objector. In accordance with this order, two-thirds of the property under attachment were sold; and the objector thereupon brought a regular suit for a declaration of his right as a purchaser of the whole property in execution of the prior decree. To this suit he impleaded as defendants the decree-holder and the judgment-debtors.

* Second Appeal No. 244 of 1886 from a decree of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 15th September, 1885, confirming a decree of Babu Nihal Chandra, Munsif of Azamgarh, dated the 19th May, 1885.

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The suit was decreed, and in the result the decree-holder alone was compelled to pay the whole of the costs. Subsequently he brought a suit for contribution in respect of these costs, making defendants to the suit (i) *R*, one of his co-defendants in the previous suit, personally and as heir of *A*, who was another of those co-defendants (ii), *N*, and (iii) *S*, these two being sued in the character of heirs of *A*.

Held that inasmuch as the rule preventing one wrong-doer from claiming contribution against another was confined to cases where the person seeking relief must be presumed to have known that he was acting illegally, and in this case there was no evidence to show that the plaintiff in attaching and advertizing the property for sale in execution of his decree knew he was doing an illegal act, but the inferences were all the other way, he was fully entitled in law to maintain the suit, and to recover from the defendants the proportionate amount of the costs which he had to pay for them. *Merryweather* v. *Nixan* (1), *Adamson* v. *Jarvis* (2), *Dixon* v. *Fawcus* (3), and *Supat Singh* v. *Imrit Tewari* (3), referred to.

Held, with reference to a plea of misjoinder within the terms of rule *b* of s. 44 of the Civil Procedure Code, that even if there were misjoinder of parties, the first Court, having proceeded to trial of the suit, and not having rejected the plaint or returned it for amendment, or amended it, should have disposed of it upon the merits, and found what *A's* share in the amount paid by the plaintiff was, and whether assets to that amount had come to the hands of the defendants as her heirs.

THE facts of this case are sufficiently stated, for the purposes of this report, in the judgment of the Court.

Munshi *Sukh Ram*, for the appellant.

Munshi *Kashi Prasad*, for the respondents.

STRAIGHT and BRODHURST, JJ.—On the 16th September, 1880 Hingu Lal and others sued—(1) Kishna Ram, plaintiff in the present suit, (2) Rai Rakmini Sewak Singh, (3) Musammat Ati Knar, (4) Musammat Rajuat Kuar, for declaration of their right as auction-purchasers at sale in execution of a decree obtained by them on the 12th March, 1874, upon a bond made in their favour by one Ajudhia Prasad Singh, ancestor and manager of the joint property of himself and Rai Rakmini Sewak Singh, Musammat Ati Kuar, and Musammat Rajuat Kuar. On the 28th August, 1874 Kishna Ram, plaintiff in the present suit, got a decree on a bond made in his favour by Ajudhia Prasad Singh, Narsingh Sewak, Musammat Ati Kuar, and Musammat Rajuat Kuar, and, in execution, advertized for sale four of the immoveable properties which Hingu Lal and others had bought in execution

(1) 2 Smith's L. C., 5th ed., p. 456. (2) 4 Bing. 66.
(3) 30 L. J., Q. B. 137. (4) I. L. R. 5 Calc. 720.

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of their decree. Consequently these latter persons objected in the execution department, but their objections were disallowed on the 17th September, 1879; and it being held that only the right of Ajudhia Prasad Singh had been brought to sale and passed to them at the sale under the decree of the 12th of March, 1874, Kishna Ram was allowed to sell two-thirds, which represented the interests of Musammats Ati Kuar and Rajuat Kuar. It was upon the basis of these last-mentioned facts and certain action taken by Musammats Ati Kuar and Rajuat Kuar in the mutation of names department that Hingu Lal and others brought the suit of the 16th September, 1880. Their claim was decreed by the Subordinate Judge of Azamgarh, and his decree, with a modification upon the matter of costs, was upheld by this Court. In the result, Kishna Ram was compelled to pay the whole of the costs, amounting to Rs. 822-5, and he now sues—(1) Rakmini Sewak Singh for himself and as heir of Musammat Ati Kuar, (2) Rai Narsingh Sewak, and (3) Ramanuj Sewak, in the character of heirs of Ati Kuar, for two-thirds of that amount, namely, Rs. 548-3-4 and interest Rs. 101-11-8, or in all Rs. 649-15.

The only objections with which we need concern ourselves in appeal that were taken by the defendants were—*first*, that the claim against the defendants had been misjoined, looking to the terms of rule *b* of s. 44 of the Civil Procedure Code; and *secondly*, that Kishna Ram and the defendants having been joint tort-feasors in respect of the matters out of which the suit of Hingu Lal and others, and in which the costs were recovered, arose, he could not require a contribution from them. The first Court found for the defendants on the plea of misjoinder, but did not specifically dispose of the other questions, and dismissed the suit. The plaintiffs appealed, and the Judge disposed of the case in these terms:—"In this Court the decree in the former suit has been produced, and as it turns out to have been, as defendants say, for trespass, plaintiff cannot obtain contribution. Besides this, I agree with the lower Court that there is misjoinder of defendants." This is a very summary and far from satisfactory method of dealing with two difficult legal questions, and it has not unnaturally led to an appeal to this Court. The first point to be determined is whether the suit, upon the facts we have stated, lies; and next, if it does, whether

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it is bad for misjoinder. With regard to the former of these two questions, it is, no doubt, a well-known legal truism that "no action for contribution is maintainable by one wrong-doer against another, although the one who claims contribution may have been compelled to satisfy the whole damages arising from the tort committed by them both."—*Merryweather* v. *Nixan* (1). But this rule has this limitation, that it "is confined to cases where the persons seeking redress must be presumed to have known that he was doing an unlawful act."—Best, C. J., in *Adamson* v. *Jervis* (2). A case which illustrates the method in which the principle is to be applied is that of *Dixon* v. *Fawcus* (3), a reference to which is to be found on page 170 of Smith's L. C. Adapting it to the circumstances of the present case, it is obvious that there is no evidence to show that the plaintiff, in attaching and advertizing the four villages for sale in execution of his decree against Ajudhia Prasad, knew he was doing an illegal act—indeed, the inferences are all the other way. Consequently he was, in our opinion, fully entitled in law to maintain the present suit, and to recover from the defendants the proportionate amount of the costs which he had to pay for them—*Suput Singh* v. *Imrit Tewari* (4). In using the term defendants, we mean as against Rakmini Sewak personally and as heir of Ati Kuar, and against Narsingh Sewak and Ramanuj Sewak as heirs of Ati Kuar.

As to the second question, even if there was misjoinder of parties, the Munsif, having proceeded to trial of the suit, and not having rejected the plaint or returned it for amendment, or amended it, should have disposed of it upon the merits, and found what Ati Kuar's share in the amount paid by the plaintiff was, and whether assets to that amount had come to the hands of the defendants as her heirs. As the learned Judge in appeal eventually disposed of the case on a preliminary point, we remand it to him under s. 562 of the Code for determination on the merits with advertence to our remarks. Costs will be costs in the cause.

Cause remanded.

(1) 2 Smith's L. C., 5th ed., p. 456. (2) 4 Bing. 66.
(3) 30 L. J. Q. B. 137. (4) I. L. R. 5 Calc. 720.