

ing with him I need say nothing further except that the order which he has passed is the only order which could be passed in the case.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Mahmood.

INDAR KUAR (PLAINTIFF) v. GUR PRASAD AND ANOTHER (DEFENDANTS). *

Civil Procedure Code, ss. 28, 45—Mis-joinder of causes of action.

The judgment of the majority of the Full Bench in *Narsingh Das v. Mangal Dubey* (1), except in its general observations as to the provisions of the Civil Procedure Code relating to joinder of parties and causes of action, proceeded upon and had reference to the special circumstances of the case, and to the allegations made by the plaintiff in his plaint, and was not intended to be carried further.

In a suit for possession of immoveable property part of which had been usufructuarly mortgaged by defendant No. 1 to defendant No. 2, the plaintiff alleged that the first defendant had no title to make such a mortgage, while both defendants maintained such title.

Held that inasmuch as the title of defendant No. 2 was derived from defendant No. 1, and stood or fell with the failure or success of the plaintiff's claim against the latter, there were not two causes of action but one, namely, the infringement of the plaintiff's right by the defendant No. 1, and hence the suit was not bad for misjoinder of causes of action.

THE facts of this case are sufficiently stated in the judgment of the Court.

Pandit *Moti Lal Nehru* and Pandit *Bishambhar Nath*, for the appellant.

Munshi *Ram Prasad*, for the respondent.

STRAIGHT, J.—The plaint in this case is somewhat prolix, but stripped of superfluous details and allegations, it comes to this, that as to the defendant Gur Prasad, the plaintiff seeks to have her title declared to and to obtain possession of a 4 annas 8 pies share in mauza Lehra, and as to the defendant Bank, to eject it as a trespasser in possession from 2 annas 8 pies out of the 4 annas pies of Sisai Sipah, which it professes to hold under a usufructuary mortgage executed in its favour by the defendant Gur Prasad, by

* First Appeal, No. 85 of 1887, from a decree of Babu Promoda Charn Banerji, Subordinate Judge of Allahabad, dated the 22nd March, 1887.

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having it declared that he had no title to make such a mortgage, the share mortgaged, as well as the remaining share, being the property of the plaintiff by inheritance from his deceased mother Musammatt Bijja. It is unnecessary to say more of the defendant Gur Prasad's defence to the suit than that he denies that any share in property belonging to the plaintiff is now in his possession, and as to the 2 annas 8 pies of Sisai Sipah, he says it was mortgaged by him to the defendant Bank with possession in order to raise funds to save the share from auction-sale for arrears of Government revenue. The defendant Bank reiterates this statement, and claims the right of a usufructuary mortgagee to hold possession of the share until the mortgage-debt has been discharged. It is clear therefore from this that any right the defendant Bank has, flows through and from the defendant Gur Prasad: in other words, that as to part of the plaintiff's claim, they have a united interest, in the sense that any title the Bank can make must be made through him. The learned Subordinate Judge, who had the case before him, as the Court of first instance, has held the suit bad for misjoinder of causes of action for the reasons stated by him in his decision, relying more especially on a Full Bench ruling of this Court, *Narsingh Das v. Mangal Dubey* (1). As I am responsible for the terms of the judgment of the majority in that case, having written it, I think it right to say that, except in so far as the general observations in it as to the provisions of the Civil Procedure Code relating to joinder of parties and causes of action are concerned, it proceeded upon and had reference to the special facts and circumstances of the case itself and to the allegations made by the plaintiff in his plaint. I may also add that I know my brother Judges, who were parties to the ruling, took the same view, and had no intention that it should be carried further than the particular case in which it was made. In the present suit, as to the one head of claim in which the defendant Bank is interested, any title that it possesses flows through and is derived from the defendant Gur Prasad, and if he has usurped or appropriated rights

(1) I. L. R., 5 All. 163.

which belong to the plaintiff as to the village Sisai Sipah, such title stands or falls, according as the plaintiff establishes or fails to establish her claim against him. There cannot therefore properly be said to be two causes of action: on the contrary, there is a single cause of action, namely the infringement of the plaintiff's right by the defendant Gur Prasad, out of which has flowed the title asserted by the defendant Bank and denied by the plaintiff. For these reasons I think the learned Subordinate Judge was wrong in the view he took, and in applying the Full Bench ruling to the present case. I allow the appeal, and reversing his decree, direct him to restore the suit to his file of pending cases and to dispose of it according to law. Costs will be costs in the suit.

MAHMOOD, J.—I agree in all that has been said by my brother Straight in respect of this case; and as I was the only dissentient Judge in the Full Bench case of *Narsingh Das v. Mangal Dubey* (1), I wish to say that I am very glad to adopt the interpretation which my brother has put upon that ruling, and concur in the order which he has made.

Cause remanded.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.

CHEDA LAL AND ANOTHER (PLAINTIFFS) v. BADULLAH AND OTHERS
(DEFENDANTS).*

Practice—Appeal on full court-fee from decree dismissing suit in part—Remand of whole case, though no cross-appeal or objections preferred—Dismissal of whole suit on remand—High Court competent in second appeal to consider validity of remand order not specifically appealed—Civil Procedure Code, ss. 544, 561, 562, 578.

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A plaintiff whose suit had been decreed in part appealed from so much of the first Court's decree as was adverse to him, and stamped his memorandum of appeal with a stamp which would have covered an appeal from the whole decree. The defendant did not appeal or file cross-objections. The lower appellate Court remanded the whole case to the first Court under s. 562 of the Civil Procedure Code, the plaintiff

* Second Appeal No. 2086 of 1886, from a decree of Maulvi Zain-ul-abdin, Subordinate Judge of Moradabad, dated the 24th July, 1886, confirming a decree of Muhammad Ezid Bakhsh, Munsif of Moradabad, dated the 22nd December, 1884.

(1) I. L. R., 5 All. 163.