

The plaintiff's case here is distinguishable from the case which was before the Privy Council, in that the plaintiff does not rely alone on a plea of non-execution.

Having regard to this, and also to the manner in which the case before the Privy Council was dealt with, we are unable to hold that the plaintiff's suit as brought will not lie.

[The Court then went on to consider the merits of the appeal, and, finding that the plaintiff had not established grounds which would entitle her to avoid the bond, decreed the appeal and dismissed the plaintiff's suit.]

Appeal decreed.

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

PARBATI (PLAINTIFF) *v.* NIA AR (DEFENDANT).

Lambardár—Irregular appointment of lambardár by Collector—Landlord and tenant Co sharers—Right of tenant to pay his entire rent to married co-sharers.

Held that where the Collector of a district appointed by order one of two co-sharers in a *mahál* to be lambardár and directed the tenants to pay rent to her, no lambardár having been appointed at the settlement of the *mahál*, or at any time by agreement between the co-sharers, such appointment by the Collector did not empower the lambardár, so appointed, to collect the rents of the tenants.

Held also that in the absence of either an arrangement recorded at the settlement under section 65 of Act No. XIX of 1873, or a local custom or special contract, one of several co-sharers in a *mahál* could not be taken to have a general right to receive the whole of the rent payable by a tenant in the *mahál*.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. E. A. Howard and Mr. Abdul Raoof for the appellant.

Pandit Sunbar Lal for the respondent.

EDGE, C.J., and BURKITT, J.—This was a suit for rent of an agricultural holding brought under Act No. XII of 1881 by one of two co-sharers in a *mahál* against a tenant. The two co-sharers are the widows of the late Baldeo Sahai, who was sole owner of the *mahál*. The tenant pleaded payment to the widow, who is not

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a party to this suit. The first Court decreed the claim. The District Judge dismissed the suit in appeal. The plaintiff, Musammat Parbati, has brought this appeal. There was at the settlement, so far as the evidence on the record goes, no arrangement made by the Settlement Officer, or agreed to by the co-sharers, as to the manner in which lambardárs or co-sharers in this *mahál* were to collect from the cultivators, and consequently there is no record in the settlement of any such arrangement; possibly for the reason that there was then no necessity for any such arrangement, there being then one sole proprietor of the *mahál*. The Collector of the district by an order of the 7th of May 1892, appointed Musammat Parbati, one of the co-sharers, to be lambardár of the *mahál*, and, as we are told, directed that the tenants should pay their rents to Musammat Parbati as lambardár. What power in law the Collector had in this particular case to direct that the rents should be paid to a lambardár whom he appointed to an office created by himself and not created at the settlement or by arrangement between the co-sharers, we fail to see. We were referred to a decision in *Ganga Sahai v. Ganga Bakhsh* (1). That case is not in point. There at the settlement the office of lambardár was created and the lambardár was the person to receive the rents, and in the *wajib-ul-arz* it was stated that the lambardár collected the rents. It was contended here on behalf of the respondent that any co-sharer has authority to receive the whole of the rent payable by a tenant, and is only liable to account therefor to the co-sharers. That is a proposition too general to meet with our acceptance. If that general proposition were correct, it would be difficult to understand the object of section 106 of Act No. XII of 1881. No doubt it may be recorded under section 65 of Act No. XIX of 1873, at the settlement that each co-sharer may receive rent from the tenants, or there may be a local custom or special contract to that effect. Here there is neither local custom nor special contract, nor a record under section 65 of Act No. XIX of 1873. We are, in this particular case, unable to say that the Court below was

(1) *Weekly Notes*, 1892, p. 2.

wrong in holding that the receipt given by Musammat Sundar, one of the two co-sharers, was a valid receipt and discharge for the rent due. We dismiss this appeal with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burkitt.
SALIMA BIBI AND OTHERS (DEFENDANTS) v. SHEIKH MUHAMMAD
AND OTHERS (PLAINTIFFS.)*

Cause of action, definition of—Misjoinder of causes of action—Civil Procedure Code, sections 31, 45, 53.

The term 'cause of action' as used in sections 31 and 45 of the Code of Civil Procedure is there used in the same sense as it is used in English law, *i.e.*, a cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.

Where three plaintiffs brought a joint suit for the possession of immovable property, in which two of them were claiming half the property under a title by inheritance, and the third was claiming the other half of the property in virtue of a sale thereof to him by the first two plaintiffs, *held* that the suit so framed was bad for misjoinder of causes of action, and that the plaint should be returned, that the plaintiffs might elect which of them should proceed with the suit.

Jugobundhoo Dutt v. Mrs. C. B. Maseyh (1), *Anund Chunder Ghose v. Komul Navain Ghose* (2), *Prem Shook v. Bheekoo* (3), *Cooke v. Gill* (4), *Read v. Brown* (5), *Smurthwaite v. Hannay* (6), *Musummat Chand Kour v. Partab Singh* (7), *Murti v. Bholu Ram* (8), *Nussercranji Merwanji Panday v. Gordon* (9), *Ramanuja v. Devanayaka* (10), and *Ram Serak Singh v. Nakched Singh* (11), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Ram Prasad* for the appellants.

Pandit *Sundar Lal* for the respondents.

EDGE, C.J., and BURKITT, J.—This appeal has been brought by the defendants from the decree of the Subordinate Judge of Jaunpur. The plaintiffs in the suit are Sheikh Muhammad, the

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* First appeal No. 136 of 1892, from a decree of Bai Anant Ram, Subordinate Judge of Jaunpore, dated the 12th March 1892.

(1) W. R., 1864 p. 81.

(2) 2 W. R., 219.

(3) N.-W. P. H. C. Rep., 1868, p. 242.

(4) L. R., 8 C. P., 107.

(5) L. R., 22 Q. B. D., 128.

(11) I. L. R., 4 All., 261.

(6) L. R., 1894, A. C., 494.

(7) L. R., 15 I. A., 156.

(8) I. L. R., 16 All., 165.

(9) I. L. R., 6 Bom., 266.

(10) I. L. R., 8 Mad., 361.