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They were private alienations of the property attached. We declare that by reason of section 276 of the Code of Civil Procedure the two leases above referred to were void. We allow the appeal with costs in all Courts, and, setting aside the decree of the Court below, we restore the decree of the first Court.

Appeal decreed.

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December 13.

Before Mr. Justice Banerji and Mr. Justice Aikman.

JINO (DEFENDANT) *v.* MANON (PLAINTIFF).*

Pleadings—Suit, frame of—Plaint asking for reliefs inconsistent with each other—Plaint so framed no ground for dismissing suit.

Held that the fact that a plaintiff claims in his plaint two alternative reliefs which are inconsistent with each other is no ground in itself for the dismissal of the suit. *Iyappa* v *Ramalakshmamma* (1) dissented from; *Mahomed Buksh Khan* v. *Husseini Bibi* (2 referred to.

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

Mr. *T. Conlan*, Mr. *Muhammad Raoof* and Pandit *Sundar Lal* for the appellant.

The Hon'ble Mr. *Colvin*, Munshi *Ram Prasad* and Babu *Durga Charan Banerji* for the respondent.

BANERJI and AIKMAN, JJ.—The suit out of which this appeal has arisen was brought by the respondent, Musammat Manon, against the appellant, Musammat Jino, and three other defendants. The plaintiff's suit was dismissed against these other defendants and decreed against Musammat Jino, who now appeals.

The object of the suit was to avoid a bond, bearing date the 21st of July 1889, and purporting to have been executed by Musammat Manon in favor of Musammat Jino. The avoidance of the bond was asked for on two grounds: First, that it was a forgery and never was executed by the plaintiff, and next (in the event of the Court not finding the bond to be a forgery) that it was void for want of consideration.

First Appeal No. 130 of 1893, from a decree of Babu Sanwal Singh, Subordinate Judge of Saharanpur, dated the 30th March 1893.

(1) I. L. R., 13 Mad., 548. (2) L. R., 15 I. A., 86.

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The bond recites that gold mohurs and ornaments to the value of Rs. 51,100 had been deposited in trust with Musammat Manon by Musammat Jino, and that these had been accidentally lost by Musammat Manon. It sets forth that out of this amount Rs. 3,100 had already been paid, and covenants to pay the balance, Rs. 48,000, in a lump sum in the course of ten years. As security for the payment of this balance the obligor hypothecates her landed property. The bond provides further that in the event of the obligor dying within the ten years the amount secured may be recovered from the hypothecated property with interest at 12 annas per cent. per mensem.

The plaint alleges that the defendants colluded with one another to forge the bond, and that in order to supply a consideration for the bond they invented the story of the deposit of the gold mohurs and jewelry. The plaintiff denies that any property belonging to Musammat Jino was ever deposited with her, and pleads that if property had been deposited and stolen she would not have been liable to make good the loss. With reference to this last plea, it may be observed, that it is not alleged in the bond that the property was stolen.

In the plaint as originally framed, two reliefs in the alternative were claimed:—

(1) "That it may be declared by the Court that the bond aforesaid, dated the 21st of July 1889, and registered on the 23rd of July 1889, for Rs. 48,000, was not executed by the plaintiff, nor was it executed legally on her behalf, nor was it registered formally.

(2) "That in case of the Court hesitating to grant the above relief, it may at least be declared that the bond aforesaid is waste paper, and the contract set forth therein null and void for want of actual and valid consideration."

By an amendment dated the 7th of March 1891, the following was substituted for the two reliefs set forth above:—

"The plaintiff prays that by decision of the Court the bond dated the 21st of July 1889, and registered on the 23rd of July

1889, for Rs. 48,000, may be declared to be null and void as against the plaintiff."

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Both in the lower Court and here it was contended on behalf of the defendant that the suit as brought would not lie. In support of this contention we are referred to the decision in the case of *Iyappa* v. *Ramalakshmamma* (1). The learned Judges who decided that cases, in the course of their judgment, observe as follows :—

"The gist of the plaintiff's charge against the defendant was that she never had executed a sale-deed in his favour, and that the document set up by him was a forgery. It was not competent to the plaintiff to combine with this charge as an alternative the wholly inconsistent charge that if she did execute the document no consideration was received by her, or that fraud was practised upon her." The case referred to was disposed of on another ground, and the above remark was consequently an *obiter dictum*.

But if the above extract contains a correct statement of the law, the suit of the respondent here ought to have been thrown out, as she has done what the learned Judges in the Madras case held it was not competent for a plaintiff to do, that is, combined with a charge of forgery "the wholly inconsistent charge that if she did execute the document no consideration was received by her." But we find ourselves unable to follow the learned Judges who decided the the case of *Iyappa* v. *Ramalakshmamma* in holding that a Court has power to throw out a suit on the ground that in its opinion the plaint sets up two inconsistent cases. If a plaintiff chooses to come into Court on a plaint which contains allegations inconsistent with one another, this circumstance might militate strongly against the plaintiff succeeding in the suit. But we do not think a Court would be justified on this ground alone in dismissing the suit. We are of opinion that the Code of Civil Procedure does not give a Court power to reject such a plaint. It is true that under section 53 (*b*) (*iii*) of the Code a plaint may be returned for amendment, if it "joins causes of action which ought not to be joined in the same suit." But this, we consider, refers to causes

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of action the joinder of which is prohibited by section 44 of the Code.

The learned Judges who decided the Madras case refer to a judgment of the Privy Council, *Mahomed Buksh Khan* v. *Hosseini Bibi*, (1 as supporting the proposition laid down in the passage quoted. That was a suit brought to set aside a deed of gift. In their judgment their Lordships of the Privy Council say :—"The only ground of action alleged in the plaint is that the *hibbanama* of the 30th of May 1881 was a fabricated document, and that her (*i.e.*, the plaintiff's) alleged signature was a forgery." One of the issues framed in the case was as follows :- "Whether the *hibbanama* on behalf of Shahzadi Bibi is genuine and valid and executed with her knowledge and consent, or whether it was manufactured without her knowledge and consent, or whether it was executed under undue influence."

With reference to this issue the Privy Council observe :—"In their Lordships' opinion the latter part of that issue ought not to have been admitted. It was absolutely inconsistent with the case made by the plaintiff. It only becomes possible on the assumption that the alleged cause of action was unfounded. There was another issue which also was only admissible on that assumption, namely, 3rd, whether, in case the said *hibbanama* is proved to be genuine, it is invalid on any ground according to Muhammadan law."

But notwithstanding this observation their Lordships go on to say :—"The questions therefore which had to be decided by the Court, and which now have to be considered by their Lordships, are these: —First, was the deed really executed by Shahzadi? Secondly, if so, are there any circumstances which go to prove that it ought not to be held binding upon her? and thirdly, is the gift valid under Muhammadan law?" And although after a review of the evidence their Lordships find that the plaintiff's plea of non-execution is false, they go on to consider the question whether the deed was executed under undue influence, and whether it was invalid according to Muhammadan law.

(1) L. R., 15 I. A., 86 ; s. c. I. L., R. 15 Calc., 684.

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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.

1895 *December* 13.

PARBATI (PLAINTIFF) *v.* NIAMAR (DEFENDANT).*

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

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 lambardar 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 *Sundar 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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* Second Appeal No. 1275 of 1893, from a decree of H. Bateman, Esq., District Judge of Saháranpur, dated the 28th August 1893, reversing a decree of Pandit Kanhya Lal, Assistant Collector of Muzaffarnagar, dated the 6th September 1892.