1887

GOBIND CHUNDRA MAJUMDAR v. UMA CHARAN SEN.

Act, so far as it bears upon this case, could not be invoked in favor of the applicant after the sale had been confirmed. If, before the sale was confirmed, an application had been made, although after thirty days from the date of the sale the Court would possibly be justified in granting the application and extending the period of limitation if sufficient cause under s. 18 of the Limitation Act were made out. But, as I have already said, the sale was confirmed under s. 312 on the 20th November, 1886, no application having been made to set it aside ; and it, therefore, appears to us that no application could be entertained under s. 311 of the Code. If the sale was really a fraudulent sale it is open to the judgment-debtor to bring a suit to set it aside upon the ground of fraud; but we are not concerned with that matter on the present occasion. All that we have to consider is whether the application that was made to set aside the sale under s. 311 is within time; and we are of opinion that it is not. We are informed that an application has been made by the decree-holder to set aside the decree itself upon the ground of fraud, and that the said application has been allowed, but that the order passed in that matter is now the subject of an appeal to a higher Court. If it be found that the decree has been fraudulently obtained, the decree-holder in the present case being the purchaser at the sale, there will be no difficulty in the way of the present applicant getting back his property; but, perhaps, it is not necessary in this case for us to express any opinion upon the subject.

The appeal will be dismissed. We make no order as to costs.

T. A. P. *Appeal dismissed.*

Before Mr. Justice Tottenham and Mr Justice Norris.

RAM NARAIN DUT (PLAINTIFF) *v.* ANNODA PROSAD JOSHI AND OTHERS (DEFENDANTS). *

1887 *June* 10.

Multifariousness—Misjoinder of causes of action—Misjoinder of parties.

The plaintiff, a talukdar, obtained a decree under s. 52 of the Rent Act (Bengal Act VIII of 1869) to eject his tenant for arrears of rent and to obtain

* Appeal from Appellate Decree No. 2400 of 1886, against the decree of Baboo Mohendro Nath Mitter, Subordinate Judge of Burdwan, dated the 13th of August, 1886, reversing the decree of Baboo Debendra Lal Shome, Munsiff of Burdwan, dated the 17th of July, 1885.

1887

RAM NARAIN DUT v. ANNODA PROSAD JOSHI.

possession of his tenure. In attempting to execute that decree he was opposed as regards certain plots, which he alleged were comprised in the tenure by parties in possession, who instituted proceedings against him under s. 332 of the Civil Procedure Code. These proceedings resulted in their claims being decided in their favor. The plaintiff thereupon instituted one suit against his judgment-debtor and all parties who had opposed him in such proceedings, to obtain a declaration that all the several plots claimed against him belonged to the tenure in respect of which he had obtained a decree for khas possession, and he also prayed for khas possession of the various plots.

It was found that the titles relied on by the defendants, and which had been set up by them in the proceedings under s. 332, were quite distinct one from another, and that there had been no collusion or combination amongst them to keep the plaintiff out of possession, but on the contrary that the defences were *bonâ fide*.

Held, that the suit was bad for misjoinder of causes of action and was properly dismissed.

IN this case there were twelve defendants. The plaintiff alleged in his plaint that the first defendant, Lolit Mohun Goswami, held a jumma of Rs. 78-13-7½ gundas in mouzah Bhaitya of which he was the talukdar, and that on the 8th September, 1881, he obtained a decree for arrears of rent and for ejectment against Lolit Mohun, and in execution got possession of some of the lands appertaining to the jumma, but that the defendants other than Lolit Mohun had wrongfully in collusion with each other withheld possession of the remaining lands, some 35 plots, which were described in the Schedule to the plaint. The plaintiff stated that he brought this suit to establish his mal title to the lands in question and to recover possession, and that his cause of action arose on the 8th September, 1881, the date of his decree against Lolit Mohun.

Lolit Mohun did not appear to the suit, but the other defendants filed written statements, some of them pleading misjoinder of causes of action and limitation, and setting up their respective titles to the plots of which they respectively held possession.

It appeared from the proceedings in the suit that, after the plaintiff obtained his decree on the 8th September, 1881, against Lolit Mohun, he obtained possession of some of the lands in the

jote, including some of those in the possession of some of the present defendants; that thereupon those defendants applied under s. 332 of the Code of Civil Procedure, and got their separate lands separately restored to them in July, 1882. As regards other lands, the subject of the suit, the plaintiff admitted that he had not included them in his list of lands filed in the execution department, and that no attempt had been made to take possession of them, and hence that he had not been resisted. These facts, however, were not stated in the plaint.

The Munsiff framed an issue as to whether the suit could proceed against all the defendants, and upon such issue he said: "There is no doubt a misjoinder of different causes of action. Each defendant claims separate plots of land by separate title deeds, and therefore a separate suit should have been brought against each defendant for possession of those plots from which he kept the plaintiff out of possession. As the law does not lay down that such a suit should be thrown out on account of such a defect I pass it over." He then proceeded to try the suit on its merits, and decreed it in part.

The defendants appealed.

The Subordinate Judge held that the plaintiff had no cause of action against those defendants against whom he had not attempted to execute his decree, and who had consequently offered no resistance, and as regards the others that his cause of action did not accrue on the 8th September, 1881, but on the dates upon which the defendants had respectively resisted him and got a decision in their favor in the proceedings under s. 332 of the Civil Procedure Code. He further found that the defendants disclosed their separate titles and claimed their separate plots in those proceedings, and that the plaintiff in order to get rid of the effect of their proceedings suppressed them altogether and charged the defendants with collusion and combining to keep him out of possession, to prove which there was not a particle of evidence, and that on the contrary the plaintiff's own gomastah had proved that the defendants were in separate possession of separate plots of land and that there was nothing in common between them. He accordingly held that

1887

RAM NARAIN DUT v. ANNODA PROSAD JOSHI.

the case was clearly within the purview of the Full Bench Ruling in *Raja Ram Tewari Luchman Pershad* (1), and relying upon that case and the cases of *Motee Lall* v. *Ranee* (2) and *Maniruddin Ahmed* v. *Ram Chand* (3) held that the suit must be dismissed on the ground of misjoinder of causes of action. In that Court the case of *Janoki Nath Mookerjee* v. *Ramrunjun Chuckerbutty* (4) was relied on on behalf of the plaintiff, but the Subordinate Judge in referring to it stated that there the facts were entirely different, and that it was an authority for holding that, when distinct causes of action were improperly joined against *the same defendant* or *the same defendants jointly*, the Court instead of dismissing the suit could proceed to separate them and try them separately. The Subordinate Judge also referred to the Full Bench case of *Narsingh Das* v. *Mangal Dubey* (5) as an authority in support of his decision, and also to the cases of *Bhagwati Prasad Gir* v. *Bindeshri Gir* (6) and *Haranund Mozoomdar* v. *Prosunno Chunder Biswas* (7).

He therefore held that the defendants had nothing in common with each other; that they had suffered injury by the improper joinder of several causes of action against them separately; and that consequently the plaintiff's suit must fail.

He therefore set aside the decree of the Court below and dismissed the plaintiff's suit with costs.

The plaintiff now preferred this second appeal to the High Court upon grounds which are sufficiently stated in the judgment of the High Court.

Baboo *Karuna Sindhu Mukerjee* for the appellant.

Baboo *Guru Doss Bannerjee* and Baboo *Juggut Chunder Bannerjee* for the respondents.

The following cases were cited and relied on at the hearing of the appeal: *Raja Ram Tewari* v. *Luchman Pershad* (1); *Motee Lall* v. *Ranee* (2); *Maniruddin Ahmed* v. *Ram Chand* (3); *Narsingh Das* v. *Mangal Dubey* (5); *Loke Nath Surma* v.

(1) B. L. R., Sup. Vol, 731; 8 W. R., 15.
(2) 8 W. R., 64.
(3) 2 B. L. R., A. C., 341.
(4) I. L. R., 4 Calc., 949.
(5) I. L. R., 5 All., 163.
(6) I. L. R., 6 All., 106.
(7) I. L. R., 9 Calc., 763.

1887

RAM NARAIN DUT v. ANNODA PROSAD JOSHI.

Keshab Ram Doss (1); *Haranund Mozoomdar* v. *Prosunno Chunder Biswas* (2).

The judgment of the Court (TOTTENHAM and NORRIS, JJ.) was as follows :—

This is an appeal against the decree of the Subordinate Judge of Burdwan reversing the decree of the Munsiff in favor of the plaintiff, and dismissing the suit on account of misjoinder of several causes of action. For the appellant it is contended that the lower Appellate Court was wrong in holding that the suit was liable to be dismissed for such misjoinder.

It was contended that there was no misjoinder, and it was contended that, if there was misjoinder, then, inasmuch as the first Court exercised its judicial discretion in not dismissing the suit upon that ground, the Subordinate Judge in appeal ought not to have interfered. It seems that the first Court was of opinion that there was misjoinder of different causes of action in the suit. The Munsiff was of opinion that a separate suit should have been brought against each defendant; but he says, as the law does not lay down that such a suit should be thrown out on account of such a defect, he passed it over.

It appears to us that the Munsiff was quite right in saying that there was a misjoinder of causes of action, and it appears to us that the lower Appellate Court was quite right in saying that the suit must be dismissed.

The plaintiff had obtained a decree under s. 52 of the Rent Law of 1869 to eject his tenant for arrears of rent and to obtain possession of the tenure. In attempting to execute that decree he was opposed as regards certain plots of land which he alleged to be comprised in that tenure. As to some of the lands he got possession without opposition, but as to many plots he was opposed. Those who opposed him apparently instituted proceedings under s. 332 of the Code of Civil Procedure, and their claims were decided under that section in their favor.

The present suit was brought by the plaintiff to obtain a declaration that all the several plots claimed against him by the several defendants in these proceedings belonged to the tenure

(1) I. L. R., 13 Calc., 147. (2) I. L. R., 9 Calc., 763.

1887

RAM NARAIN DUT v. ANNODA PROSAD JOSHI.

in respect of which he had obtained a decree for khas possession, and prayed for khas possession of the various plots.

There appear to be some twelve different defendants named in the plaint. They filed separate defences and several pleaded misjoinder. They set up totally different titles, quite distinct one from another, in respect of the various plots of land, and equally distinct one from another. The plaintiff's case as stated in the plaint made no mention of the proceedings under s. 332. It merely mentioned that the defendants in collusion had prevented him from getting possession under his decree under s. 52 of the Rent Act. He sought therefore to treat them as having combined to prevent his executing his decree.

The lower Appellate Court, in coming to the conclusion that the case was bad for misjoinder, did go to a certain extent into the evidence, and we think that he could not have done otherwise.

It has been objected by the appellant's pleader in this case that the lower Appellate Court had no right to consider the evidence in the case, and then, upon that evidence, to hold that the suit was bad for misjoinder. We think, however, that the course adopted by the lower Courts was right.

If the allegations set forth in the plaint had been correct, then perhaps there would be no misjoinder; but, upon the contentions set out in the written statements, it is clear that the defendants did not admit any combination or joint action on their part in opposing the plaintiff. We think that the lower Appellate Court, therefore, was right in looking to the evidence to see whether the allegations of the plaintiff were made out. He found that the allegation of collusion or combination was altogether unfounded. The several defences were found to be *bonâ fide*, which they put forward in respect of various plots of land claimed by the plaintiff, and, inasmuch as the proceedings under s. 332 had given the plaintiff full notice of these claims, it would certainly have been competent to the plaintiff to sue them separately in respect of the lands separately claimed; and further it appears to us that the plaintiff had no right to sue the defendants jointly in respect of the separately-claimed lands.

1887

RAM NARAIN DUT v. ANNODA PROSAD JOSHI.

The lower Appellate Court has relied upon the Full Bench decision in *Raja Ram Tewari* v. *Luchman Pershad* (1), and it is contended for the appellant that the principle laid down in that case was not applicable to the facts of the present case, inasmuch as the plaintiff in the present case had one object, *viz.*, to establish title to the lands which he got possession of in execution of a decree under s. 52 of Bengal Act VIII of 1869; and the defendants who contest his claim had but one defence, which is common to them all, *viz*, to invalidate the plaintiff's title. This we find upon perusal of the judgment is by no means the case. The plaintiff may have had one object, *viz.*, to get possession of all the lands, but it is not correct to say that the defendants had joint defences common to all. We think, therefore, that the lower Appellate Court was right in saying that the suit was bad for misjoinder. The Code of Civil Procedure, s. 31, provides that no suit shall be defeated by reason of misjoinder of parties. This is not a case of misjoinder only of parties; it is a case of misjoinder of causes of action. There is no section of the Code which permits a person to sue various defendants together in respect of various causes of action. We think that in this case the plaintiff had a distinct cause of action against each of the defendants who set up his own title in respect of one or other of the different plots of land. That being so we dismiss the appeal with costs.

H. T. H. *Appeal dismissed.*

Before Mr. Justice Tottenham and Mr. Justice Norris.

MADHO MISSER (PLAINTIFF) *v.* SIDH BINAIK UPADHYA *alias* BENA UPADHYA (DEFENDANT).*

1887
June 13.

Transfer of Property Act (Act IV of 1882), s. 100—Charge on immovable property—Mortgage—Construction of document—Limitation.

Under s. 100 of the Transfer of Property Act, for a document to create a charge on immovable property, it must be a document that creates such charge immediately on its execution, and not operate only as a charge at some

* Appeal from Appellate Decree No. 2383 of 1886, against the decree of Baboo Dinesh Chunder Roy, Subordinate Judge of Arrah, dated the 11th of August, 1886, reversing the decree of Baboo Sheo Sarun Lal, Munsiff of Arrah, dated the 9th of January, 1886.

(1) B. L. R., Sup. Vol., 731; 8 W. R., 15.