

determined by the lower Court, but it appears that the defendant appellant was not proved to have had any notice of the interest of the plaintiffs, respondents, in the property. On the contrary, the evidence, so far as it goes, goes to show that some inquiry was made by or on behalf of the appellant as to interested parties, and that he was unable to ascertain that there was any one interested in the property at the time of suit other than Nathu Ram. For these reasons we are of opinion that the appellant has established his case, and we accordingly allow the appeal, set aside the decree of the Court below, and dismiss the plaintiffs' suit with costs in both Courts.

1902

PARMANAND  
v.  
DAULAT  
RAM.

*Appeal decreed.*

*Before Sir John Stanley, Knight, Chief Justice and  
Mr. Justice Banerji.*

1902  
July 10.

HINGU LAL (PLAINTIFF) v. BALDEO RAM AND OTHERS (DEFENDANTS).\*

*Civil Procedure Code, sections 43, 44—Cause of action—Misjoinder of causes of action—Omission to claim all the reliefs to which plaintiff is entitled to on the cause of action.*

One *R D* brought a suit against two persons *M* and *G*, claiming to recover certain cash and ornaments belonging to one Sahai, deceased. To that suit *B R* and *B*, who had previously brought a suit for certain immovable property belonging to the same estate, applied to be, and were, added as defendants. After this *H L*, the son of *R D*, brought a suit claiming possession of a house which originally belonged to Sahai, and which was alleged to be then in the possession of *B R* and *B*.

*Held* that the provisions of section 43 of the Code of Civil Procedure did not apply to these facts so as to bar the suit brought by *H L*.

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

Mr. *B. E. O'Connor* and Pandit *Madan Mohan Malaviya* (for whom Pandit *Tej Bahadur Sapru*), for the appellant.

Pandit *Sundar Lal* and Munshi *Gokul Prasad*, for the respondents.

STANLEY, C.J. and BANERJI, J.—This is an appeal against the decree of the District Judge of Mirzapur, dismissing the suit of the plaintiff, appellant, on the ground that it is barred by the

\* Second Appeal No. 1024 of 1900, from a decree of Nawab Muhammad Ishaq Khan, District Judge of Mirzapur, dated the 2nd of November, 1900, reversing a decree of Munshi Anant Prasad, Subordinate Judge of Mirzapur, dated the 27th of August, 1900.

1902

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HINGU  
LAL  
v.  
BALDEO  
RAM.

provisions of section 43 of the Code of Civil Procedure. The property claimed is a house which originally belonged to one Sahai. After Sahai's death it was in the possession of his widow, Musammat Kabutra, who died in 1892. The defendants are the brother, and the sons of the brother of Musammat Kabutra, and they are alleged to be in possession of the house. The plaintiff claims to be entitled to the house as next heir of Sahai after his widow's death. The suit was resisted upon the ground, amongst others, that it offended against the provisions of the 43rd section of the Code. The Court of first instance overruled this plea and decreed the plaintiff's claim. The defendants appealed, and in their appeal they reiterated the plea based on the provisions of section 43. The lower appellate Court allowed the plea and dismissed the suit. The plaintiff appeals to this Court. It appears that the plaintiff's father Ram Das brought a suit against two persons, Mathura and Gopal, claiming to recover certain cash and ornaments alleged to have belonged to Sahai. The defendants, Baldeo Ram and Bawan, appear to have brought a suit for certain immovable property before the institution of Ram Das' suit, and they applied to the Court, under section 32 of the Code of Civil Procedure, to be added as defendants to the suit brought by Ram Das. Their application was granted, and they were made defendants. The learned Judge of the lower appellate Court has held that the plaintiff's father Ram Das was bound to amend his plaint in the suit brought by him, and to add a prayer for recovery of possession of the house now in suit as soon as Baldeo Ram and Bawan were made parties to it, and that his omission to do so precludes the plaintiff from bringing the present suit. We are unable to agree with this view. As regards Ganeshi, defendant, who was not a party to the former suit, section 43 certainly has no application. As regards the other defendants also, we think that that section cannot operate as a bar. The learned Judge says, that when Baldeo Ram and Bawan were added as defendants to Ram Das' suit, Ram Das was bound, under the provisions of section 33 of the Code of Civil Procedure, to amend his plaint, and "to bring the whole of his claim against all the four defendants for adjudication before the Court." The learned Judge overlooks the fact that the plaintiff in that

suit had no claim in respect of the house against the original defendants. Section 33 does not certainly contemplate that upon the addition of defendants to a suit a cause of action different from that upon which the suit was founded, which may have accrued to the plaintiff against the added defendants, should be added to the claim. All that section 33 requires is, that when a defendant is added the plaint should be amended in such manner as may be necessary, and an amended copy of the summons served on the defendants. The amendment there referred to is such amendment as is necessitated by the addition of a defendant, and not such an amendment as would add to or alter the nature of the suit as originally brought. Further, the learned Judge seems to have lost sight of the provisions of section 44 of the Code of Civil Procedure, which forbids the joinder with a suit for the recovery of immovable property, or to obtain a declaration of title to such property of any claim other than the claims specified in the section. Now the suit brought by Ram Das was a suit to recover movable property, and he could not have added to such a suit a claim for possession of immovable property without violating the provisions of section 44. We think that the learned Judge was clearly wrong in dismissing the suit. We therefore allow the appeal, set aside the decree of the Court below, and remand the case under section 562 of the Code of Civil Procedure to that Court for trial on the merits. The appellant will have the costs of this appeal. Other costs will follow the event.

*Appeal decreed and cause remanded.*

1902

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 HINGU  
 LAL  
 v.  
 BALDEO  
 RAM.

