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Rs. 500 has been allowed for that. Taking the view we take of the principle on which compensation should be assessed, to allow this sum would be giving compensation twice over.

The result is that the case must go back to the District Judge to try two issues, first, what was the value of the lands and buildings, excluding of course the lands taken by Government, before the railway was made and when they were capable of being profitably used for factory purposes; and, secondly, what is the value of the same lands and buildings now, taking them as lands and buildings which cannot be profitably used for the purposes of a factory. The District Judge is asked to return his findings within two months from the time when the record reaches his Court.

We think that 15 per cent. should be allowed on the value of the lands plus the crops, including the bamboos.

K. M. C. *Case remanded.*

Before Mr. Justice Prinsep and Mr. Justice Beverley.

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SUDHENDU MOHUN ROY AND OTHERS (DEFENDANTS) *v.* DURGA DASI AND OTHERS (PLAINTIFFS).*

Misjoinder—Plea of misjoinder, when sustainable—Suit against several persons claiming under different titles, Effect of—Civil Procedure Code, ss. 31 *and* 53.

A, as auction-purchaser in a revenue sale, brought a suit against a number of persons for possession of some *chur* land. The defendants claimed portions of the land under different titles and pleaded misjoinder. The Court upon the Amin's report gave *A* the option to amend the plaint by withdrawing the suit against any particular sets of defendants. *A* elected to go to trial on the suit as brought:

Held, that under the circumstances it was necessary for the Court to adjudicate on the question of misjoinder.

Held, also, that the plaintiff was not entitled to join in one suit all the persons, on the ground that they obstructed his possession, unless he was able to show that those persons acted in concert or under some common title.

Held, further, that, having regard to the provisions of ss. 31 and 53 of the Civil Procedure Code, the proper order of the Court should have been to reject the plaint, and not dismiss the suit on the ground of misjoinder.

* Appeals from Orders Nos. 326 and 327 of 1886, against the orders of W. H. Page, Esq., Judge of Dacca, dated the 1st of June 1886, reversing the orders of Baboo Moti Lall Sircar, Subordinate Judge of Dacca, dated the 16th of April 1885.

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SUDHENDU MOHUN ROY v. DURGA DASI.

THIS was a suit for the possession of a tract of *chur* land appertaining to certain *taluks* which the plaintiffs had purchased at a revenue sale. A large number of persons was joined as defendants, who set up various titles and objected to the suits on the ground, among others, of multifariousness. The Court deputed the Amin for the purpose of a local investigation; and from the report of that officer it appeared what portion of the land was in possession of which set of defendants. The Subordinate Judge being satisfied that the defendants had made a *bonâ fide* defence in setting up separate titles with respect to separate plots asked the plaintiffs to choose against which set of defendants and which land they would proceed; but the plaintiffs insisted upon proceeding with the suit as framed. The Subordinate Judge found that the defendants had not, as alleged in the plaint, combined and made a common cause in preventing the plaintiffs from taking possession, and upon the authorities of *Baboo Motee Lal* v. *Rance* (1), *Tara Prosunno Sircar* v. *Koomaree Debee* (2), *Haranund Mozoomdar* v. *Prosunno Chunder Biswas* (3), dismissed the suit, holding that, inasmuch as there were groups of defendants who showed different titles and would have to give different evidence, they could not all be joined in one suit. On appeal the District Judge, differing from the Court of first instance, remanded the case for trial on the merits—*Sheikh Omar Ali* v. *Sheikh Weylayet Ali* (4); *Janokinath Mookerjee* v. *Ramrunjun Chuckerbutty* (5); *Haranund Mozoomdar* v. *Prosunno Chunder Biswas* (3). An appeal was preferred from this decision (in which was included another suit between the same parties in a similar matter) to the High Court. The two cases were heard together.

Mr. *Bell* and Baboo *Aukhil Chunder Sen* for the appellants.

Baboo *Srinath Dass* and Baboo *Kalichurn Banerjee* for the respondents.

Mr. *Bell* discussed the following cases: *Sheikh Omar Ali* v. *Sheikh Weylayet Ali* (4); *Haranund Mozumdar* v. *Prosunno*

(1) 8 W. R., 64.
(2) 23 W. R., 389.
(3) I. L. R., 9 Calc., 763.
(4) 4 C. L. R., 455.
(5) I. L. R., 4 Calc., 949.

Chunder Biswas (1); *Raja Ram Tewary* v. *Luchmun Prosad* (2); *Bxboo Motee Lal* v. *Ranee* (3); *Imrit Nath Jha* v. *Roy Dhunpat Sing Bahadur* (4); *Messrs. Jardine, Skinner & Co.* v. *Ranee Shama Soonduree Debia* (5); *The Darley Main Colliery Company* v. *Mitchell* (6); *Munshi Moniruddin Ahmed* v. *Babu Ram Chand* (7.)

The following was the judgment of the Court (PRINSEP and BEVERLEY, JJ.):—

The plaintiffs in these two suits are purchasers at a sale held for arrears of Government revenue, and they sue for possession of a tract of *chur* land which they say belongs to their estate and forms mouzah Kusandia. They also state that this land was measured and depicted in the Government Revenue Survey as portion of that estate; that afterwards it diluviated and has now re-formed on the same site. The plaintiffs further state that, on attempting to take possession of this land, they have been resisted by the defendants, and they accordingly bring this suit against a large number of persons, numbering 67, who, they say, have acted in concert and collusively. An objection was taken in the written statement of the defendants that the lands were obscurely described in the plaint, that the suit has been wrongly brought against several persons who claim to hold portions of this land under different titles, and the defendants also disputed the correctness of the survey maps on which the plaintiffs relied.

In the first Court, the only issue tried was that of multifariousness, and in order to ascertain the exact position of the parties, an Amin was directed to ascertain and show on a map the lands claimed by the plaintiffs, and those portions which were claimed by the different sets of defendants separately from one another. The Subordinate Judge before trying the case gave the plaintiffs an opportunity of amending their plaint by withdrawing the suit as against any particular sets of defendants. But the plaintiffs persisted in the trial of the suit as it was brought, and preferred to abide by the consequences.

(1) I. L. R., 9 Calc., 763.
(2) B. L. R., Sup. Vol., 731; 8 W. R., 15.
(3) 8 W. R., 64.
(4) 9 B. L. R., 241.
(5) 13 W. R., 196.
(6) 11 Ap. Ca., 127.
(7) 2 B. L. R., 341.

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The Subordinate Judge first of all found on the evidence that the defendants did not combine and make common cause in preventing the plaintiffs from taking possession. He also found that when the plaintiffs went to take possession and asked for *kabuliyats* from the tenants they were told that the tenants held the lands under different sets of defendants, that is to say, that they had no community of interest. He accordingly held that the suits were bad for multifariousness and dismissed them. In appeal, the District Judge considered that no inconvenience would be caused to defendants by the suit being tried in the form in which they were brought. He further remarked that the plaintiffs "had no means of ascertaining the quantity and boundaries of the land held by each separate defendant which they would have been required to specify if they brought separate suits." The District Judge accordingly remanded the cases for trial on the merits.

It is exceedingly undesirable that any suit should fail on account of any technical objection such as is now before us. But at the same time, when such an objection is raised, as in the present suits at the first hearing and at the earliest opportunity, and when serious inconvenience and expense is likely to be caused to defendants by suits such as have been found by the first Court to have been brought, it is impossible for the Courts not to adjudicate upon the objection and to relieve the defendants from the inconvenience and expense to which they must be subjected. No apportionment of costs in the decree which may be passed, if such a suit be tried out, can put the defendants in the position which they were entitled to hold in a suit properly brought. They are therefore entitled to require the Courts to relieve them from the certain inconvenience and expense to which the irregularity, if found to exist, must subject them. The plaintiffs' (respondents') pleader has attempted to support the manner in which the suits have been brought. He contends that the only issue for trial between the parties was the correctness of the survey proceedings under which this land was marked off as forming a portion of the estate purchased by the plaintiffs. We think that this is not a correct representation of the main issues in the suit, and that on the face of the plaint

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many other issues must necessarily arise. It is clear from the findings before us that all the defendants had no community of interest in the present suit. It does not appear when they entered upon the lands claimed by the plaintiffs, but it is complained that, when the plaintiffs sought to enter upon the lands, they were opposed by the defendants, who were already in occupation of them. The fact that the plaintiffs' title was acquired by auction sale, and that they were unable to obtain possession of the lands which they maintain they purchased, does not give them the right to join in one suit all the persons who obstruct their possession, unless they can show that those persons acted in concert or under some common title. The first Court distinctly finds against the plaintiffs on the evidence on this point. The second Court did not consider it necessary to determine it because, in the opinion of the District Judge, the plaintiffs' case in any view was properly framed. After considering the authorities upon which the District Judge relies, and numerous other cases which have been cited by the learned counsel for the appellant, none of which are opposed to the contrary view, we cannot concur in the opinion arrived at by the District Judge. A separate suit should have been brought against each separate set of defendants who held parcels of land against the title set up by the plaintiffs by reason of an adverse title. The plaintiffs-respondents' pleader asks us to remand the case in order that his clients may have a finding from the lower Appellate Court whether the suits were rightly brought against the defendants on the ground that they acted in concert and in collusion in obstructing their possession. The lower Appellate Court has expressed no opinion on this point; but after hearing the evidence on the record read by the learned counsel for the appellants, we think that there is no evidence in support of this allegation. It is, therefore, altogether unnecessary to remand the case for this purpose, or to put the parties to the expense of further proceedings, which can have only one result. We may observe that, with regard to ss. 31 and 53 of the Civil Procedure Code, we think that the proper order on the findings of the first Court would have been not to dismiss the suits but to order that the plaints be rejected as being bad in form, such as

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would not entitle the plaintiffs to claim the suits to be tried. The result is that the orders of the lower Courts must be set aside. The plaints will be rejected and the plaintiffs will pay the costs throughout.

K. M. C. *Remand order set aside.*

Before Mr. Justice Prinsep and Mr. Justice Trevelyan.

1886 *March* 10.

BHOLANATH BANDYOPADHYA (PLAINTIFF) *v.* UMACHURN BANDYOPADHYA (DEFENDANT)

AND

UMA CHURN BANDYOPADHYA (DEFENDANT) *v.* BHOLANATH BANDYOPADHYA (PLAINTIFF).*

Sale for arrears of revenue—Act XI of 1859, *ss.* 37, 52—*Sunderbund Estate—District of which portion only is permanently settled—District, Meaning of—Beng. Regs. IX of* 1816 *and III of* 1828—*Estate—Bengal Act VII of* 1868.

The plaintiff was the auction-purchaser at a sale under Act XI of 1859 by the Collector of the 24-Pergunnahs for arrears of revenue of an estate in the Sunderbunds on which the defendant was the holder of a *mokurari maurasi jungleburi* tenure, under which he was to clear away the jungle and then to cultivate the land with paddy. The estate was one borne on the register of revenue-paying estates in the Collectorate of the 24-Pergunnahs, and therefore within that Collectorate with regard to the provisions of Bengal Act VII of 1868, s. 10. The district of the 24-Pergunnahs is a permanently-settled district, but the portion of it forming the Sunderbunds was declared by Reg. III of 1828, s. 13, not to be included in the permanent settlement. The Sunderbunds tract was moreover under Reg. IX of 1816 formed into a separate jurisdiction for settlement purposes under an officer styled the Commissioner of the Sunderbunds, who is subject to the direct control of the Board of Revenue, and independent of the Collector of the 24-Pergunnahs. In a suit after notice to quit to eject the defendant, and obtain possession of the land, or to have the defendant's tenure annulled: *Held* that, whether the term "district" was used with reference to the jurisdiction of the Civil Courts or the Revenue Collector, the plaintiff was the purchaser of an estate in a "permanently-settled district" within the meaning of s. 37 of Act XI of 1859, and not in a district "not permanently-settled" within s. 52 of that Act; and he was

* Appeals from Appellate Decrees Nos. 826 and 992 of 1885, against the decrees of J. G. Charles, Esq., Judge of 24-Pergunnahs, dated the 28th of January and 17th of February, 1885, affirming the decrees of Baboo Bulloram Mullick, Subordinate Judge of that District, dated the 10th of September, 1883.