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April 2.

Before Mr. Justice Banerji and Mr. Justice Aikman.
MAZHAR ALI KHAN (PLAINTIFF) v. SAJJAD HUSAIN KHAN
(DEFENDANT).*

Civil Procedure Code, sections 31, 44—Misjoinder of defendants and causes of action—Suit by transferee from heir of deceased Muhammadan against another heir and transferee from such other heir.

A plaintiff came into Court claiming a portion of the inheritance of a deceased Muhammadan on the allegation that he had by two separate sale-deeds of different dates purchased the property from two of the heirs of the deceased, and that the said property was withheld from him by another of the heirs of the deceased, who was in possession of some of it, and by certain transferees of other portions from the said heir. Both the remaining heir and the transferees from him were made defendants. *Held* that there was no misjoinder of parties or of causes of action in such a suit. *Indar Kuar v. Gur Prasad* (1) followed.

With reference to the objection that the claim included both movable and immovable property, and that the leave of the Court for the joinder of the two claims had not been obtained, it was *held* that section 44 of the Code of Civil Procedure did not apply to such a case. *Giyana Sambandha Pandara Sannadhi v. Kundasami Tambiran* (2) referred to.

THE suit out of which this appeal arose was one brought under the following circumstances to recover shares of the inheritance of a deceased Muhammadan. The property in suit, comprising both movable and immovable property, had belonged to one Munawwar Ali Khan. The plaintiff alleged that after the death of Munawwar Ali he had purchased from one of the heirs of the deceased, Abul Hasan, two and a half *sihams* out of five *sihams* by a sale deed, dated the 10th of November, 1892, and from another of the heirs, Musammat Mashiat-un-nissa, two *sihams*, by a sale deed, dated the 28th of May 1887, the latter purchase having been made *benami* for him by one Sipahi Singh. Two-thirds of the property so purchased had been sold off; and the plaintiff accordingly sought to recover three-quarters of the four and a half *sihams* dealt with by his sale deeds. The plaintiff alleged that this property was in the possession of one Sajjad Husain, another of the heirs of Munawwar Ali, who, according to the plaintiff, had withheld possession from the plaintiff's vendors and had transferred a portion of the property to other persons, who were also named as defendants.

* First Appeal No. 184 of 1899 from a decree of Lala Mata Prasad, Subordinate Judge of Moradabad, dated the 15th of July 1899.

(1) (1888) I. L. R., 11 All., 33. (2) (1886) I. L. R., 10 Mad., 375 at p. 506.

The defendants pleaded, *inter alia*, that the suit was bad for misjoinder of parties and of causes of action, and that a necessary party, Musammat Munawwar-un-nissa one of the heirs of Munawwar Ali Khan, had not been joined. The Court of first instance (Subordinate Judge of Moradabad) accepted the defendants' objections, and, holding that the suit was bad for misjoinder of both parties and causes of action, dismissed it. The plaintiff appealed to the High Court.

Maulvi *Ghulam Muftaba*, for the appellant.

Babu *Jogindro Nath Chaudhri*, *Munshi Gokul Prasad* and *Pandit Tej Bahadur Sapru*, for the respondents.

BANERJI and AIKMAN, JJ.—This is an appeal from a decree of the Subordinate Judge of Moradabad dismissing the plaintiff's suit on the ground of misjoinder of defendants and of causes of action. The property which was claimed originally belonged to one Munawwar Ali Khan. The plaintiff alleged himself to be the purchaser of the interests of Masit-un-nissa and Abdul Hasan, two of the heirs of Munawwar Ali Khan, and he claimed a portion of the shares purchased by him against Sajjad Husain Khan, another heir of Munawwar Ali Khan, who, he asserted, had withheld possession from the plaintiff's vendors, and had transferred a portion of the property to the other defendants. The plaintiff's title was acquired under two sale-deeds, one dated the 28th of May 1887, and the other dated the 10th of November, 1892. The Court below has held that the plaintiff had separate causes of action; that those causes of action had accrued separately against the different defendants; and that there was a misjoinder both of causes of action and of defendants.

In the first place, it may be observed that the Subordinate Judge is wrong in saying that the claims of different purchasers have been included in one suit. If the plaintiff's allegation be true, he is the purchaser under both the sale-deeds mentioned above, so that this is not a case of different purchasers claiming in one suit, but it is a claim made by the same person who purchased the property claimed under different sale-deeds. That is the Subordinate Judge's first mistake. In the next place, the reference to the second paragraph of section 31 of the Code of Civil Procedure in the judgment of the Lower Court overlooks the important

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words which appear in that paragraph. The paragraph runs as follows:—“Nothing in this section shall be deemed to enable a plaintiff to join in respect of distinct causes of action.” The Subordinate Judge has read it as if it ran *nothing shall be deemed to enable a plaintiff to join distinct causes of action*. That that is not the intention of the paragraph is clear from the provisions of section 45, which distinctly enable a plaintiff to join in the same suit several causes of action against the same defendant or the same set of defendants. In the third place, the learned Subordinate Judge has overlooked the fact that the defendants other than Sajjad Husain derive title from and claim through that defendant, and have for that reason been made defendants to the suit. The plaintiff’s action is justified by the ruling of this Court in *Inder Kuar v. Gur Prasad* (1). In no point of view, therefore, has there been a misjoinder either of causes of action or of parties. On the part of the respondents reference was made to section 44 of the Code of Civil Procedure, and it was urged that as in this suit the plaintiff claimed both movable and immovable property, and had done so without obtaining the leave of the Court, the suit was bad as contravening the provisions of that section. A complete answer is afforded to the objection by the ruling of the Madras High Court in *Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran* (2). We may also remark that the Court below showed a want of discretion in not acceding to the prayer of the plaintiff and the principal defendants for a short adjournment to enable them to compromise the suit. The result is that we allow the appeal, set aside the decree of the Court below, and remand the case to that Court under section 562 of the Code of Civil Procedure, with directions to readmit it under its original number in the register, and dispose of it according to law. Costs here and hitherto will abide the event.

Appeal decreed and cause remanded.

(1) (1886) I. L. R., 11 All., 33. (2) (1886) I. L. R., 10 Mad., 375; at p. 506.