

APPELLATE CIVIL.

1914
April, 28

Before Mr. Justice Tudball and Mr. Justice Chamier.

BAL KRISHNA DAS (PLAINTIFF) v. HIRA LAL BAGLA AND OTHERS
(DEFENDANTS)*

Civil Procedure Code (1908), order I, rule 3—Parties—Misjoinder—Suit by reversioner for possession—Other reversioners and transferees from widow joined as defendants.

Held that it was competent to a reversioner suing for possession of immovable property after the death of a Hindu widow to join as defendants both other reversioners in possession of the property claimed and also transferees of such property from the widow, and the suit was not bad for multifariousness. *Parbati Kunwar v. Mahmud Fatima* (1), *Kubra Jan v. Ram Bali* (2) and *Ganeshi Lal v. Khairati Singh* (3) referred to.

THIS was a suit for possession of immovable property brought by a reversioner after the death of a Hindu widow and her daughter. Several defendants were impleaded in the suit, of whom one was admittedly entitled to a portion of the property as a reversioner whilst others were transferees from the lady who was last in possession. There were various defences, among them being the plea that the suit was bad for multifariousness. During the pendency of the suit the plaintiff and defendants 1 and 2 came to terms. Under the compromise a house which was transferred to defendants 3 and 4 and certain property which was mortgaged to defendant 5 were to go to the plaintiff and the rest of the property was to go to defendant 2. On the basis of this compromise the court below gave the plaintiff a decree as against defendants 1 and 2, but it held that the suit was bad for multifariousness, and it called upon the plaintiff to elect as to the portion of his suit with which he would proceed. The plaintiff declined to elect and so the court below dismissed the suit with costs.

The plaintiff appealed to the High Court.

The Hon'ble Dr. *Sundar Lal*, Dr. *Satish Chandra Banerji* and Babu *Lalit Mohan Banerji*, for the appellant.

Mr. *S. J. Shapoorji*, Babu *Jogindro Nath Chaudhri*, Babu *Harendra Krishna Mukerji*, The Hon'ble Dr. *Tej Bahadur*

*First Appeal No. 390 of 1912 from a decree of *Srish Chandra Basu*, Subordinate Judge of Benares, dated the 16th of July, 1912.

(1) (1907) I. L. R., 29 All., 267. (2) (1908) I. L. R., 30 All., 560.

(3) (1894) I. L. R., 16 All., 279.

Sapru and Babu *Amulya Charan Mitra*, for the respondents.

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TUDBALL and CHAMIER, J J.—This is a plaintiff's appeal arising out of a suit for possession of property. The plaintiff's case was that one Ram Jas died leaving an estate and a widow, Musammat Hira Dei. The latter died and was succeeded by his daughter Musammat Lakhi Bibi, who died on the 23rd of April, 1906. Musammat Lakhi Bibi transferred certain portions of the estate. The plaintiff claims as a *bandhu* a one third share of the estate, admitting that defendant No. 2 is entitled to two thirds. He impleaded defendants 1 and 2 as being in possession of some of the property, defendants 3 and 4 as transferees of a certain house in Calcutta from Musammat Lakhi Bibi, and defendant 5 as a mortgagee of another portion of the estate from the same lady. These transfers he alleges to be null and void as against his interest. There were various defences, among them being the plea that the suit was bad for multifariousness. During the pendency of the suit the plaintiff and defendants 1 and 2 came to terms. Under the compromise that house which was transferred to defendants 3 and 4 and the property which was mortgaged to defendant 5 were to go to the plaintiff and the rest of the property was to go to defendant 2. On the basis of this compromise the court below gave the plaintiff a decree as against defendant 1 and 2, but it held that the suit was bad for multifariousness and it called upon the plaintiff to elect as to the portion of his suit with which he would proceed. The plaintiff declined to elect, and so the court below dismissed the suit with costs. We may also note that after the compromise with defendants 1 and 2 the plaintiff sought to amend his plaint so as to enable him to recover the whole of the property transferred to defendants 3, 4 and 5. The plaintiff has come here on appeal. It is urged that the decision of the court below is incorrect, especially in view of rule 3, order I, and the decisions in *Parbati Kunwar v. Mahmud Fatima* (1) and *Kubra Jan v. Ram Bali* (2). On behalf of the respondents it is urged that the case is similar in all its aspects to the decision in *Ganeshi Lal v. Khairati Singh* (3). We are clearly of opinion that,

(1) (1907) I. L. R., 29 All., 267. (2) (1908) I. L. R., 30 All., 650.

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whatever may have been the correct view of the law as it was prior to the present Code of Civil Procedure, the point is covered by the clear language of order I, rule 3. Under that order it is clear that the plaintiff's suit was not bad for multifariousness and he was entitled to join all the defendants as parties to the suit so as to enable him to recover his share in the whole of the estate of Ram Jas. In this view the appeal must succeed. We allow the appeal, set aside the decree of the court below and remand the case to that court for decision according to law. The plaintiff will be allowed to amend his plaint as desired. The costs of this appeal will be costs in the cause and will abide the result.

Appeal allowed.

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April, 29.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

BALESHAR AND ANOTHER (DEFENDANTS) v. RAM DEO (PLAINTIFF) AND
BANARAJ AND OTHERS (DEFENDANTS).*

Act No. XV of 1877 (*Indian Limitation Act*), section 19. Acknowledgment.
Suit for redemption—Admission in plaint that a certain person had a right to redeem as a co-mortgagor.

Where in a suit for redemption of a mortgage the plaintiffs, who were purchasers of a portion of the mortgaged property, admitted in their plaint the right of a representative of one of the original mortgagors to redeem, it was held that this was a good acknowledgment within the meaning of section 19 of the Indian Limitation Act, 1877, and enured in favour of the representatives of the person so mentioned. *Sulhamoni Choudhrami v. Ishan Chunder Roy* (1) referred to.

THE material facts of this case were as follows :—

Mohan Singh, Naunid Singh and Zahar Singh were three brothers. Mohan Singh as managing member of the family mortgaged a 5 anna 4 pie zamindari share in four villages to one Ishri Singh for Rs. 601, on the 25th of July, 1823, and put the mortgagees in possession. Mohan Singh had two sons, *viz.*, Manni Singh and Naipal Singh. Manni Singh and the descendants of the other two brothers of Mohan Singh sold their equity of redemption in the said bond to two brothers, Bam Bharos and Ram Kumar, who sued for redemption of the mortgage of the 25th of July, 1823, against the heirs of Ishri Singh in 1884 and got a decree on the 22nd of November, 1884. In the plaint they set out the fact of the mortgage

*First Appeal No. 218 of 1913 from an order of Guru Prasad Dube, Subordinate Judge of Allahabad, dated the 30th of June, 1913.

(1) (1898) J. L. B., 25 Calc., 844; L. R., 25 I. A., 95.