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Lawyers, of course, are presumed to know the law, but the law may at times be forgotten or be not understood. We are satisfied that this notice would not have been sent if Dr. Misra had been under the impression that an offence of contempt of court would be committed thereby.

In his statement Dr. Misra towards the conclusion has said as follows: "If this Hon'ble Court be of opinion that the notice should not have been issued by me and it constitutes a contempt of court, then I respectfully assure this Hon'ble Court that it was done quite unwittingly and unintentionally and express my unqualified regret for it." This, in our opinion, is a fair attitude to take up. In these circumstances, although we find Dr. Misra guilty of contempt of the subordinate court, we remit the punishment under section 3 of the Contempt of Courts Act. We, however, order that he must pay the costs of the applicant in this proceeding, which we assess at Rs.100.

APPELLATE CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Collister

1934 *September*, 27

SABIRI BEGAM (DEFENDANT CROSS-OBJECTOR) *v.* RADHA KISHAN AND OTHERS (PLAINTIFFS) AND NAZIR AHMAD KHAN AND OTHERS (DEFENDANTS)*

Civil Procedure Code, order XLI, rule 22—Cross-objections against a co-respondent—Not maintainable where such co-respondent has no community of interest with the appellant and the cross-objections proceed on the same grounds as the appeal.

Where the cross-objections filed by a respondent are directed solely against a co-respondent whose case has nothing in common with that of the appellant, and they are not to any extent directed against the appellant, on the contrary they proceed on the same grounds on which the appeal does, they are not maintainable. Cross-objections can not be permitted by one respondent against another where the effect of the cross-objections, if successful, can not be adverse to the appellant to any extent.

*Cross-objection in First Appeal No. 421 of 1932.

Mr. *Shambhu Nath Seth,* for the cross-objector.

Mr. *Mushtaq Ahmad,* for the appellant.

Messrs. *A. M. Khwaja, G. S. Pathak,* and *Krishna Murari Lal,* for the respondents.

NIAMAT-ULLAH and COLLISTER, JJ.:—This is a cross-objection filed by one of the defendants respondents in an appeal which has been compromised between the appellant and the plaintiffs respondents. A preliminary objection has been taken by the plaintiffs respondents that the cross-objections which are directed solely against them are not maintainable under order XLI, rule 22 of the Civil Procedure Code.

To appreciate the arguments addressed to us it is necessary to bear in mind the following facts. The property in dispute is village Tewar Khas. It belonged to one Muhammad Husain who had a son Ahmad Husain and three daughters, only two of whom need be mentioned, namely Bashir-uzzaman Bibi and Shaukat-uzzaman Bibi. Muhammad Husain executed a deed of gift in favour of his son Ahmad Husain some time in 1883. Not long afterwards he instituted a suit for the cancellation of that deed. The principal defendant was his son Ahmad Husain the donee. The controversy was referred to an arbitration by a common friend whose award, dated the 13th September, 1884, was made a rule of the court by decree dated 13th November, 1884. The award provided that Muhammad Husain would remain in possession of village Tewar Khas, that after his death Ahmad Husain would become the owner thereof but would have no power of transfer and would be bound to allow the property to descend upon his own heirs unfettered by any encumbrances created by himself. Ahmad Husain was made liable to pay Rs.30 a month to each of his two sisters Shaukat-uzzaman Bibi and Bashir-uzzaman Bibi. Muhammad Husain died in 1886. Ahmad Husain who entered into possession made default in payment of the monthly allowance

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which he was bound to pay under the award and the decree of 1884. His sisters instituted a suit for arrears of their allowance in 1892. The dispute between the brother and sisters was referred to arbitration. The award, which was again made a rule of the court, directed that the village Tewar Khas be made over to one of the two sisters, namely, Bashir-uzzaman Bibi, who should pay herself the monthly allowance and thereafter the monthly allowance of her sister Shaukat-uzzaman Bibi. If any surplus was left, the same was to be paid to Ahmad Husain. The award was given effect to and Bashir-uzzaman Bibi was placed in possession of village Tewar Khas. In 1910 Shaukat-uzzaman Bibi made a simple mortgage of her interest in village Tewar Khas to Asfandyar Beg, who has since died and is now represented by his son Husain Yar Beg. In 1912 Asfandyar Beg enforced his mortgage and had the rights of Shaukat-uzzaman Bibi sold. He himself became the auction purchaser. The result of this was that he became entitled to Rs.30 a month which his mortgagor Shaukat-uzzaman Bibi was entitled to receive in terms of the award of 1884. An arrangement was arrived at between the auction purchaser Asfandyar Beg and Bashir-uzzaman Bibi who was in possession of the village Tewar Khas, under which part of that village was made over to Asfandyar Beg who was to recover Rs.30 a month from its rents and profits. This arrangement appears to have been given effect to. In 1922 Bashir-uzzaman Bibi executed a deed of wakf the particulars of which need not be stated in detail. In 1924 she executed another deed of wakf. One related to her right in that portion of the village Tewar Khas which was in possession of Asfandyar Beg. The other related to the rest of her rights in that village. By one or both of these deeds she made her daughter's daughter Mst. Sabiri Begam, the present cross-objector, a beneficiary entitled to receive Rs.10 per month. Nazir Ahmad, the son of Shaukat-uzzaman Bibi who

had died in the meantime, was made the mutwalli entitled to manage the wakf properties. Accordingly Nazir Ahmad obtained possession of that part of Tewar Khas which was not in possession of Asfandyar Beg. The plaintiffs, Radha Kishan and his three brothers, claim to be the auction purchasers of the right, title and interest of Ahmad Husain. They instituted a suit against Nazir Ahmad the mutwalli, Husain Yar Beg, Mst. Sabiri Begam one of the beneficiaries under the wakf, and two others. They claimed the relief of possession and mesne profits on the ground that Shaukat-uzzaman Bibi and Bashir-uzzaman Bibi were entitled to receive Rs.30 a month only for life, and both having died their legal representatives by inheritance or by transfer are no longer entitled to that allowance, and that the plaintiffs, being the representatives in interest of Ahmad Husain the paramount owner, are entitled to actual possession of the entire village Tewar Khas.

It will appear that the plaintiffs repudiate the title of Husain Yar Beg and Sabiri Begam precisely on the same ground. Husain Yar Beg claims to derive his right partly from Shaukat-uzzaman Bibi and partly from Bashir-uzzaman Bibi. Sabiri Begam claims to derive title from Bashir-uzzaman Bibi. The nature of the rights of Bashir-uzzaman Bibi and Shaukat-uzzaman Bibi is precisely identical. The suit was contested by Husain Yar Beg and Sabiri Begam on identical grounds. They pleaded that the plaintiffs acquired no interest by auction purchase because Ahmad Husain whose interest they purchased had no transferable rights. Sabiri Begam took the additional plea that she is entitled to Rs.10 a month under the deeds of wakf of 1922 and 1924, but this plea is of no consequence as against the plaintiffs, as, if the plaintiffs' rights prevail—and they can prevail only if Shaukat-uzzaman Bibi and Bashir-uzzaman Bibi had only life interest—the deeds of wakf lapsed on their deaths and Sabiri

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Begam ceased to be entitled to anything thereunder. If on the other hand the plaintiffs' rights do not prevail for the alleged reason that their predecessor in title Ahmad Husain had no transferable right, their suit should be dismissed and it would not be necessary to adjudicate on Mst. Sabiri Begam's additional plea.

The Subordinate Judge decreed the plaintiffs' suit in its entirety. The mutwalli Nazir Ahmad did not appeal nor did Mst. Sabiri. Husain Yar Beg preferred an appeal which was numbered as First Appeal No. 421 of 1932. On receipt of summons Mst. Sabiri Begam filed cross-objections which it is not disputed were filed after the expiry of the period of limitation for an appeal by her against the decree. Husain Yar Beg and the plaintiffs entered into a compromise, the effect of which was that the former's appeal was dismissed. There only remain the cross-objections of Mst. Sabiri Begam which, if otherwise maintainable, remain unaffected by the fact that the appeal has been dismissed.

The plaintiffs respondents have taken the preliminary objection that, in the circumstances of the case, Mst. Sabiri's cross-objections, which are directed against them alone, are not maintainable and should be dismissed without a hearing thereof on the merits. From the narrative of the facts given above it is clear that Mst. Sabiri Begam's cross-objections proceed on the same grounds as Husain Yar Beg's appeal which has been dismissed. They are not to any extent directed against the appellant Husain Yar Beg. The position of Sabiri Begam in the litigation was such that she could very well have joined Husain Yar Beg in the appeal filed by him. They both attack the plaintiffs respondents on the same grounds. On the one hand it is contended on behalf of the plaintiffs respondents that cross-objections can be directed only against the appellant and that it is not open to one of the respondents who has not preferred an appeal to file

cross-objections under order XLI, rule 22 against his co-respondents. On the other hand it is argued on behalf of Mst. Sabiri Begam that the language of order XLI, rule 22 is general enough to allow cross-objections by a respondent who could have appealed from a part of the decree but has not done so. It seems to us that the correct view lies midway between the extreme contentions which have been put forward before us on behalf of the plaintiffs respondents and Mst. Sabiri Begam. The expression "cross-objection" is clearly indicative of the fact that it should be directed against the appellant, but it may be taken against a co-respondent also if there is a community of interest between the latter and the appellant. It is clear to us that where the cross-objection is directed solely against a co-respondent whose case has nothing in common with that of the appellant, and proceeds on the same grounds on which the appeal does, it is not maintainable.

The case law on the point does not militate against this view. In *Co-operative Hindusthan Bank* v. *Surendranath De* (1) it was held that "A cross-objection, which seeks to raise a question as between two respondents *inter se* and is a purely lateral attack, in which the appellant is not concerned or interested, cannot be entertained in view of the settled practice of the Calcutta High Court, both under the old and under the present Code." The facts of this case were different, but the view taken is that a cross-objection, unless it is directed against the appellant also, is not maintainable.

In *Nursey Virji* v. *Alfred Harrison* (2) it was held that "The ordinary rule is that the cross-objections provided for by order XLI, rule 22 of the Code of Civil Procedure are cross-objections which are aimed against an appellant from a decree of a lower court and are not cross-objections against a co-respondent. In

(1) (1931) I.L.R., 59 Cal., 667. (2) (1913) I.L.R., 37 Bom., 511.

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any case such cross-objections will not be allowed as against a co-respondent where the respondent could have preferred them by way of appeal." In the case before us Mst. Sabiri Begam could have not only preferred an appeal of her own, but, as already stated, could have joined with Husain Yar Beg as appellant in the appeal which the latter filed.

In *Official Trustee of Bengal* v. *Charles Joseph Smith* (1) the point has been considered at great length. It was held that

" Order XLI, rule 22(1), in so far as it relates to a cross-objection, was provided to meet the case where a respondent, although the decree is not entirely in his favour, is content to let matters rest provided his opponent does not appeal, but who may not be willing to run the risk of having the findings in his favour varied or reversed without an opportunity of appealing against the findings which are adverse to him. The rule should ordinarily be confined to cases of cross-objections urged against the appellant, but order XLI, rule 33 gives the court a wide discretion, where justice requires it, that cross-objections against a co-respondent should be heard. The rule should not be invoked to enable a litigant to avoid the provisions of other statutes such as the Limitation Act or the Court Fees Act."

In *Abdul Ghani* v. *Muhammad Fasih* (2) which was decided under the Code of 1882, it was held that "Where it is necessary for the proper decision of an appeal before it, it is competent to an appellate court to take into consideration objections filed under section 561 of the Code of Civil Procedure by one of the respondents, not only as against the appellant, but, it may be, as against the co-respondents with the objector also, and to modify the decree as against them accordingly." In that case the appeal was filed by one of the defendants who impleaded the plaintiff and a defendant who had a common interest with the appellant. The plaintiff filed cross-objections which were directed against the defendant appellant and the defendant respondent. The question was whether the

(1) (1920) 5 Pat. L.J., 328. (2) (1905) I.L.R., 28 All., 95.

plaintiff should be allowed to impugn the decree by his cross-objections so far as it affected his co-respondent. It was observed as follows:

"The court of first instance had decided the suit upon a ground common to all the defendants. Consequently, under section 544 of the Code of Civil Procedure, on the appeal of only one of the defendants, the appellate court could modify or set aside in favour of all the defendants the decree of the lower court. The whole case was thus opened out in appeal, not only as between the plaintiff and the defendant who had appealed, but also as between the plaintiff and other defendants, who had been made respondents apparently because they had not joined in the appeal. Having regard to the nature of the suit, and of the decree passed by the court of first instance, those defendants were necessary parties to the appeal and complete justice could not be done without having them before the court. Under the circumstances of the case they were to all intents and purposes appellants in the lower appellate court. The objections under section 561 were preferred not only against these other defendants, the co-respondents of the plaintiff, but also against the appellant. . . . As the court on the appeal of one of the defendants could have varied or set aside the decree in favour of all the defendants, it seems to us to be just and equitable that it should also have the power upon objections taken by the plaintiff to vary the decree against all the defendants."

It will be seen that in this case the cross-objections were directed against the defendant appellant to the same extent as against the defendant respondent, the cross-objector being the plaintiff who had partly succeeded in the court of first instance.

None of these cases countenances the view that cross-objections can be permitted by one respondent against another where the effect of the cross-objections, if successful, cannot be adverse to the appellant to any extent. We hold that in the circumstances of the present case the cross-objections filed by Mst. Sabiri Begam which are directed solely against the plaintiffs respondents are not maintainable under order XLI, rule 22 of the Civil Procedure Code. Accordingly we dismiss them with costs.