

the provisions of Act XXXV of 1858, and, with the light derived from the practice of the Calcutta Court under Act XXXIV of 1858, no doubt is left on my mind that, whatever our powers may be by appeal or otherwise, we have no jurisdiction to entertain the present application, which must therefore be dismissed, but, under the circumstances, without costs.

1881

IN THE MAT-
TER OF THE
PETITION OF
JAUNDHA
KUAR
v.
THE COURT
OF WARDS.

Of course I need say nothing at present respecting our jurisdiction over the persons and estates of lunatics who are European British subjects. The application which we have now dismissed relates only to the person and property of a lunatic who is a native of India.

BRODHURST, J.—I concur with the learned Chief Justice in dismissing, without costs, the present application on the ground that we have no jurisdiction to entertain it.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

KALIAN SINGH (PLAINTIFF) v. GUR DAYAL (DEFENDANT).*

Pre-emption—Misjoinder—Irregularity not affecting merits or jurisdiction—Act X of 1877 (Civil Procedure Code), ss. 45, 578.

1881

December 14.

The sons of *R* and of *K* and of *S* possessed proprietary rights in two maháls of a certain mauza. *P* possessed proprietary rights in one of those maháls. In April, 1879, the sons of *R* sold their proprietary rights in both maháls to *G*. In August, 1879, the sons of *K* sold their proprietary rights in both maháls to *G*. Later in the same month the sons of *S* sold their proprietary rights in both maháls to *N*. *G* sued *N* to enforce a right of pre-emption in respect of the sale to the latter, and obtained a decree. *P* then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mahál of which he was a co-sharer, joining as defendants *G* and *N* and the vendors to them. *G* alone objected in the Court of first instance to the frame of the suit. That Court overruled the objection and gave *P* a decree. The lower appellate Court reversed this decree on the ground of misjoinder.

Held that in respect of *G* there was no misjoinder, but that in respect of the other defendants there was misjoinder of both causes of action and parties.

* Second Appeal, No. 975 of 1881, from a decree of C. J. Daniell, Esq., Judge of Moradabad, dated the 11th January, 1881, reversing a decree of Maulvi Maksud Ali, Subordinate Judge of Moradabad, dated the 9th July, 1880.

1881

KALIAN
SINGH
v.

GUR DAYAL.

Inasmuch as, however, *G* alone objected to the frame of the suit, and the defect did not affect the merits of the case or the jurisdiction of the Court, the lower appellate Court ought not, regard being had to s. 578 of Act X of 1877, to have reversed the decree of the Court of first instance by reason of such defect.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court:

Pandit *Ajudhia Nath*, for the appellant.

Munshi *Hanuman Prasad* and *Pandit Bishambhar Nath*, for the respondent.

The judgment of the Court (OLDFIELD, J., and BRODHURST, J.,) was delivered by

OLDFIELD, J.—It appears that in mauza Mohanpur there are three maháls. In one mahál, Kishore Singh-wala, the sons of Ram Bakhsh Singh, and the sons of Kishan Singh, and the sons of Kishore Singh, are share-holders. In the second mahál, Parmeshri Singh-wala, the same persons hold shares, together with the plaintiff, who has one-half. On the 15th April, 1879, the sons of Ram Bakhsh Singh sold their interests in the two maháls to Gur Dayal Mal, one of the defendants. On the 3rd August, 1879, the sons of Kishan Singh sold their interests in the same maháls to Gur Dayal Mal; and on the 23rd August, 1879, the sons of Kishore Singh sold their interests in the two maháls to Niada Mal and Sewa Ram. After Gur Dayal Mal had made the purchases by which he became a sharer in the maháls, he brought a suit for pre-emption against Niada Mal and Sewa Ram in respect of the subject of the third sale, and got a-decrée. The plaintiff, who is a sharer in mahál Parmeshri Singh-wala, has brought this suit against Gur Dayal Mal, Niada Mal, Sewa Ram, and the vendors to them, claiming the interests sold in mahál Parmeshri Singh-wala, under all these sales, by right of pre-emption. The Court of first instance decreed the claim on its merits. The Judge has reversed the decree, and dismissed it on the sole ground of misjoinder. It is contended in appeal that there is no misjoinder with reference to the provisions of s. 45, Civil Procedure Code, which permits a plaintiff to unite several causes of action against the same defendants in the same suit; and, so far as the defendant Gur Dayal Mal is concerned, the

contention may be accepted, but the section will not apply to the other defendants; the causes of action do not apply alike to those defendants; each sale gives a distinct and separate cause of action against different defendants, and so there is no case of uniting causes of action against the same defendants, such as s. 45 contemplates. There is, therefore, misjoinder of causes of action and parties; but none of the defendants, with the exception of Gur Dayal Mal, took the objection; and we have not been shown that the defect has affected the merits of the case or the jurisdiction of the Court, and we therefore allow the second ground of appeal under s. 578, Civil Procedure Code, and reverse the decree of the lower appellate Court, and remand the appeal for disposal on the merits: costs to follow the result.

Cause remanded.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Brodhurst.

KEDAR NATH AND ANOTHER (PLAINTIFFS) v. DEBI DIN (DEFENDANT).*

Suit on behalf of minor—Permission to relative to sue—Act XL of 1858, s. 3.

1881

December 15.

The mother of a minor, who had not obtained a certificate under Act XL of 1858, instituted a suit on behalf of the minor for some property of small value. She did not ask the Court in which she instituted the suit for permission to institute it, as required by s. 3 of that Act, but the Court entertained it, the defendant not raising the objection that it had been instituted without permission, and it was decided on the merits in favour of the minor. *Held* that, under these circumstances, it must be taken, notwithstanding there was no order allowing the mother to sue, that the suit was instituted with the Court's permission.

THIS was a suit instituted on behalf of two minors by their mother. The plaintiffs claimed, as the sons and heirs to one Ram Charan, deceased, possession of certain land belonging to him, valued at Rs. 204, and the cancellation of a deed of sale of such land in favour of the defendant, bearing date the 6th January, 1880, and purporting to be executed by Ram Charan. They alleged that such deed of sale was fabricated. The defendant set up as a defence to the suit that the plaintiffs were the illegitimate sons of Ram Charan, and had therefore no right to the land in suit; and that the deed of sale in question was a genuine instrument. The Court

* Second Appeal, No. 406 of 1881, from a decree of H. A. Harrison, Esq., Judge of Farnkhabad, dated the 11th January, 1881, reversing a decree of Maulvi Abdul Haq, Munsif of Kanauj, dated the 30th-September, 1880.