

does not really require their assistance, as there is no authority for the contention that a demand should immediately precede the application for foreclosure.

Mr. Ralli for the respondents also endeavoured to uphold the decision of the District Judge on the ground that a notice of the application for foreclosure was not served on a subsequent mortgagee. This point was not taken before the District Judge and there was no objection by the subsequent mortgagee himself. Moreover, as pointed out by Mr. Moti Sagar for the appellant, notice to a subsequent mortgagee is only necessary if there has been a complete assignment in his favour *Mulraj v. Sobha Ram* (1).

For the foregoing reasons we disagree with the decision of the Lower Court and accepting the appeal, decree the plaintiff's suit with costs in both Courts.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Shadi Lal and Mr. Justice Wilberforce.

RALIA RAM (DEFENDANT)—*Appellant,*

versus

MULK RAJ AND GIAN CHAND (PLAINTIFFS), AND OTHERS (DEFENDANTS) — *Respondents.*

Civil Appeal No. 863 of 1919.

Civil Procedure Code, Act V of 1908, section 99 and order 1, rule 3—suit by reversioners for the usual declaration in respect of a sale and previous mortgages of land—Misjoinder of parties—remand by lower Appellate Court for a fresh decision.

The plaintiffs, minor sons of G., through their maternal uncle, brought the present suit for the usual declaration in respect of a sale and previous mortgages of land effected by their father and his two brothers, defendants 1-3, in favour of the vendee, defendant 4, and the previous mortgagees, defendants 5-10. The first Court held that the suit was bad for misjoinder of parties and returned the plaint to the plaintiffs for amendment. The plaint was accordingly amended by striking out the mortgagees and the suit was thereafter

1919

GORDHAN DAS
v.
Mot. RUMMAN.

1919

Dec. 1

1919
 ———
 RALIA RAM
 v.
 MULK RAJ.

dismissed, it being found that necessity had been proved for the bulk of the sale price. On appeal the District Judge held that the suit was not bad for misjoinder of parties and remanded the case for a fresh decision after impleading the previous mortgagees. From this order the vendee appealed to this Court.

Held that, as common questions both of law and fact arose in the case, there was no misjoinder of parties—*vide* Order 1, rule 3 of the Code of Civil Procedure.

Mussammat Gopal Devi v. Jai Narain (1), not followed.

Rup Narain v. Mussammat Gopal Devi (2), *Provabati Devi v. Rameswar Mandal* (3) and *Rameswar Mandal v. Provabati Devi* (4), followed.

Held also, that the order of remand by the District Judge was not opposed to the provisions of section 99 of the Code, as the order of the first Court vitally affected the merits of the case.

Miscellaneous second appeal from the order of W. de M. Malan, Esquire, District Judge, Gurdaspur, dated the 14th March 1919, remanding the case for a fresh decision.

MEHR CHAND, Mahajan, for Appellant.

FAKIR CHAND, for Respondents.

The judgment of the Court was delivered by—

WILBERFORCE, J.—The plaintiffs in this case sued for a declaration that alienations made by their father and uncles were without consideration or legal necessity and did not affect their reversionary rights. The land had been mortgaged on various occasions and was eventually sold, the consideration consisting mainly of these previous mortgages. The vendors, vendee, and mortgagees were impleaded as defendants. A preliminary objection was taken that the suit was bad for misjoinder of parties. This objection was upheld by the first Court on the authority of *Mussammat Gopal Devi v. Jai Narain* (1). The plaintiffs therefore proceeded in their case against the vendee only. Their suit was dismissed, and in their appeal to the District Judge they attacked the decision of the first Court on the question of misjoinder. The District Judge accepted the appeal on the ground that the Privy Council judgment *Rup Narain v. Mussammat Gopal Devi* (2) had overruled the decision of this Court in *Mussammat Gopal*

(1) 1 P. R. 1905.

(2) 93 P. R. 1909 P. C.

(3) (1910) 6 Indian Cases 248.

(4) (1914) 25 Indian Cases 84.

Devi v. Jai Narain (1) and the learned Judge held that there was therefore no misjoinder of parties or causes of action. Against this decision an appeal has been preferred to this Court, and the same contentions which were raised before the District Judge have been repeated before us. It is also urged that under section 99, Civil Procedure Code, the lower appellate Court should not have reversed the decree of the first Court on account of misjoinder of parties or of causes of action. We consider that there is no doubt that their Lordships of the Privy Council disagreed with the view of this Court expressed in *Mussamat Gopal Devi v. Jai Narain* (1) and laid down the law applicable to such cases. There does not appear to have been any subsequent judgment of this Court upon the subject but the Calcutta High Court in two cases reported as *Provabati Devi v. Rameswar Mandal* (2) and *Rameswar Mandal v. Provabati Devi* (3) has followed the Privy Council judgment in question. The position is also now clearer than it was in 1905 owing to the amendments introduced into the Civil Procedure Code. Rule 3 of Order I is now on much broader lines than the old section and gives the plaintiffs the right to join as defendants all persons against whom there exists any right to relief in respect of a series of acts or transactions. We may also note that the words "where if separate suits were brought against such persons any common question of law or fact would arise" were not contained in the old Code. In this case common questions both of law and fact did arise. We therefore hold that in such a case one suit can be brought against the vendee and the prior mortgagees.

As for the objection that the District Judge acted against the provisions of section 99 in accepting the appeal and remanding the suit for the trial of the original plaint we have no doubt that the order of the first Court on the subject vitally affected the merits of the case. This is clear as it was most improbable that the plaintiff could succeed against the vendee alone who could shelter himself behind the prior mortgagees.

We therefore dismiss the appeal with costs.

Appeal dismissed.

(1) 1 P. R. 1905.

(2) (1910) 6 Indian Cases 248.

(3) (1914) 25 Indian Cases, 84.

1919

RAJIA RAM
v.
MULK RAM.