APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

MAUNG TIN

v.

MAUNG PO HTOO.*

1927

Feb. 7.

Civil Procedure Code (Act V of of 1908), *Order* 1, *Rule* 3—*Joinder of parties—Administration suit—Claim by one party as sole heir can be joined in the same suit.*

Where in an administration suit in which the original parties do not dispute one another's status as heirs a person applies to be made a defendant and claims to be the sole heir of the deceased whose estate is to be administered, so that if his claim is established the suit would be dismissed, *held*, that the Court can allow him to be added as a defendant in the suit in order to prevent multiplicity of suits and such person need not be compelled to file a separate suit to establish his status.

Burjorjee—for the Applicant (Plaintiff).

MAUNG BA, J.—This Civil Revision application arises out of Suit No. 1 of 1926 of the District Court of Hanthawaddy. That suit is an administration suit to administer the estate of U Po Toke and Daw Lai Mai, a Burman Buddhist couple who died within five days of each other. According to the plaint, the couple died childless. If that allegation be true, then six relations of the husband and wife will be the heirs. The plaintiff claims to be one of those relations and brought a suit against the other relations for the administration of their estate During the pendency of the suit, one Po Htoo claimed to be the adopted son of the couple and applied to the District Judge to be added as a co-defendant. The learned Judge granted

* Civil Revision No. 177 of 1926 arising out of Civil Regular Suit No. 1 of 1926 of the District Court of Hanthawaddy.

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the application and ordered that he should be so added.

From that order this application for revision has been filed. In a short order the learned District Judge has given his reasons for that action. That order reads :— "Mr. Burjorjee's objection that Po Htoo must establish his status by a separate suit is not valid. This is an administration suit and it is only right and proper that the question of who are the heirs entitled to share in the estate should be generally decided in the suit. Po Htoo may be added as defendant."

The law governing the question as to who may be joined as defendants is laid down in Order 1, Rule 3, Code of Civil Procedure. That rule is as follows :— "All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, if such persons brought separate suits, any common question of law or fact would arise."

No doubt if the claim of Po Htoo is established, he would be the sole heir to the estate and exclude all the other parties in that suit. The relief claimed by the plaintiff is a share in the estate. The question involved is whether he is entitled to that relief in common with the other defendants except Po Htoo or whether he is not entitled to that relief as against Po Htoo. If Po Htoo's claim is established, the suit must be dismissed. If Po Htoo's claim is not established, then the suit would have to be administered as prayed for. Of course, Po Htoo can bring a separate suit against the administrator of the estate to establish his status, but I agree with the learned Judge that Po Htoo should not be compelled to file a separate suit when the dispute about his status can very well be decided in the present suit. The legislature intended to prevent

multiplicity of suits and have therefore framed rules permitting joinder of parties and causes of action under certain circumstances.

I am of the opinion that the learned District Judge has exercised his jurisdiction properly and I see no reason to interfere. The application is dismissed.

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APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Duckworth.

1926

Sep. 6.

KO PO YEE AND BROTHERS AND FIVE OTHERS v. THE CORPORATION OF RANGOON.*

City of Rangoon Municipal Act (Burma Act VI of 1922), section 80 (2)—Basis of rating of industrial properties—"Contractor's test or principle"—Letting value.

In valuing industrial properties, what is called "the contractor's test" has been adopted in some cases. It is the interest on cost which a contractor would require if he provided the land and buildings for their present occupier. It is some test if the place is occupied by the owner but it is not a good test if the place is either tenanted or unlet.

Held, that "the contractor's test" as the sole basis of rating of rice mills or any industrial undertakings capable of being let, was not safe. Where the hypothetical tenant theory can be applied, it must be followed as it is the one contemplated by section 80 of the Act.

Kirby v. *Hunslet Assessment Committee*, L.R. [1906] A.C. 43, at page 46—*followed.*

The Queen v. *The School Board for London*, 50 J.P. 419 and [1886] 17 Q.B.D. 738—*referred to.*

Abdullabhoy Lalji and others v. *Executive Committee, Aden Settlement*, 42 Bom. 692—*distinguished.*

RUTLEDGE, C.J., AND DUCKWORTH, J.—These six appeals were heard together in respect of the rating of six rice mills in the Kanaungto Creek. The main contention for the appellants is that the Assessor was wrong in basing his assessment on what has been

* Civil Miscellaneous Appeals Nos. 235 to 240 of 1925.