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Bhuttacharjee(1) therefore, we reverse the decree of the Subordinate Judge, and direct that he investigate the alleged pauperism, and proceed thereafter according to the result of the investigation. Costs to follow the final decision.

Decree reversed.

(1) I. L. R., 2 Calc., 130.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

July 23. KHA'DAR SA'HEB AND OTHERS, APPELLANTS, *v.* CHOTIBIBI, RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), *Secs.* 32, 45 *and* 46—*Adding parties—Striking off parties—Causes of action, joinder or severance of—Non-joinder or misjoinder of parties—Practice—Procedure.*

C. sued P. to recover possession of certain lands. The plaintiff and defendant were members of the same family, and at the hearing of the suit the appellants, who were also members of the family, applied to be made parties, alleging that the suit was collusive, and that they were in possession of some of the lands which the plaintiff sought to recover, and wished to defend their possession. The Subordinate Judge granted their application, and made them co-defendants in the suit. They filed written statements setting forth their right, and time was allowed in order that the plaintiff might put in a counter statement. Before the case came on again, the Subordinate Judge had been removed, and his successor was of opinion that the causes of action, as against the original defendant P. and as against the new defendants (the appellants), were different, and ought to be the subject of different suits. He accordingly dismissed the appellants from the suit under section 45 of the Civil Procedure Code (XIV of 1882), and ordered that they should bear their own costs.

Held, on appeal to the High Court, that the order dismissing the appellants from the suit should be reversed, and that section 45 did not apply. When the parties concerned, though in different relation, in a particular litigation are all before the Court, and their cases have been stated, the Court, if it finds the several causes as between plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as subsuits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense.

The power given by section 45 does not extend to an order for the dismissal of defendants, and that a fresh suit should be brought against them. Such an order would not be one for the "separate disposal" of the several causes of action; it would be an order preventing the disposal of them in the suit before the Court.

Section 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-

* Appeal No. 31 of 1883.

joinder or misjoinder of parties provision is made in section 32, and the plaintiff had not resisted the joinder of the appellants as defendants. The Subordinate Judge could only strike out the name of a party upon an application being made, and no such application had been made.

THIS was an appeal from an order by the First Class Subordinate Judge at Belgaum ordering the removal of the appellants already joined as parties to the suit.

The plaintiff Chotibibi originally brought a suit for possession of a certain share of land against one Pádsháhibi in the Subordinate Judge's Court at Belgaum. The suit was based upon an agreement passed by Pádsháhibi to the father of the plaintiff. At the hearing of the suit the appellants Khádar Sáheb and sixteen others applied to the Court to be made co-defendants, alleging that the suit was collusive, that they were relatives of Pádsháhibi, that Pádsháhibi had not possession of so much as the plaintiff sought to recover from her, and that they were in possession of the rest of the lands in dispute. The appellants were, accordingly, made co-defendants.

The Subordinate Judge, who had made the appellants parties, was succeeded in his office by another Subordinate Judge, and, when the suit came for hearing before the latter, he was of opinion, though the plaintiff did not raise any objection, that by letting the appellants stand as co-defendants there would be a misjoinder of causes of action, and, accordingly, made an order, under section 45 of the Civil Procedure Code (XIV of 1882), that their names should be struck off the record.

The appellants appealed to the High Court against this order.

Mahádev Chimnáji Apte for the appellants.—The order made by the first Subordinate Judge, having been made under section 32 of the Civil Procedure Code (XIV of 1882), was final. The second Subordinate Judge could not set it aside. Section 34 of the Code states the time at which an objection as to misjoinder of parties is to be made. The opposite party had sufficient time to do so. The second Subordinate Judge, basing his proceeding on section 45, set aside the order of his own motion, for the opposite party itself did not object. This latter section deals with causes of action, and not joinder of parties. Section 32 relates to adding parties, but not to striking off those already joined. Holding section 45 to apply, there was no misjoinder of causes of action in the present case.

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Gokaldas Kahándás for the respondent.—The suit to which the appellants were made defendants was on an agreement to which they were strangers. If they had been allowed to come in, the nature of the suit would have been changed to a suit of a different character, and there would also have been misjoinder of causes of action. Under section 45 of the Civil Procedure Code the lower Court can at any time strike off the parties. The appellants had their remedy by a separate suit: see *Ganu* v. *Moro Ganesh*(1); *Lodai Mollah* v. *Kálidáss Roy*(2). There is no appeal from an order under section 45.

WEST, J.—In the present case the plaintiff Chotibibi sought from one Padsháhibi possession of a certain share of lands to which, she averred, she was entitled under an agreement between plaintiff's father and Pádsháhibi. The parties to the agreement were relatives, and it was asserted that as co-owners they had engaged to one another to divide the produce of the lands in a proportion to which Pádsháhibi no longer adhered. Other members of the family came in at the hearing of the suit, and asserted that the suit was collusive; that Pádsháhibi had not possession of so much as the plaintiff sought to get from her; and that they being in possession of the rest of the total interest in the lands, should be made parties to enable them to defend their menaced possession.

The Subordinate Judge made the applicants defendants in the suit, and their rights having been set forth in their written statements, time was allowed for a counter statement on the part of the plaintiff. At this stage, though long afterwards, the Subordinate Judge (a new one) arrived at the conclusion that the causes of action as against the original defendant Pádsháhibi and as against those since introduced, were essentially different, and ought to be the subjects of different suits. Professing, therefore, to act under section 45 of the Code of Civil Procedure, he dismissed the second group of defendants from the suit, with an order that they should bear their own costs.

The provisions of section 45 are meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For the non-joinder or mis-

(1) 10 Bom. H. C. Rep., 429. (2) I. L. R., 8 Calc., 238.

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joinder of parties provision is made in section 32, and the plaintiff in the present case having had the opportunity of resisting the joinder of the additional defendants, and of appealing against the order admitting them, had not availed herself of it. The Subordinate Judge could strike out the name of a party as a defendant only on an application under section 32, which was not made. It has been contended before us that as under section 45 the Court may order separate trials of the causes of action embraced in a single suit, or "make such other order as may be expedient for the separate disposal thereof", this power extends to the dismissal of certain defendants, and ordering that a fresh suit be brought against them. But it is plain that such an order would not be one for "the separate disposal" of the several causes of action; it would be an order for preventing the disposal of them in the suit before the Court. The authority is linked with that to order separate trials of the different causes arising in the suit, and is meant to be exercised in a similar, though not identical, way. Section 46 enables a defendant, who is embarrassed by a multifarious suit, to get the trial confined to a reasonable aggregate of causes of action, and in such a case the other causes must needs be left over for another suit; but this exception in a particular case proves what rule was intended in other cases falling under section 45. When the parties concerned, though in different relations, in a particular litigation are all before the Court, and their cases have been stated, the Court, if it finds the several causes, as between the plaintiff and the several defendants, cannot properly or conveniently be tried together, should deal with them separately as what may be called sub-suits under the title and number of the principal suit from which they spring. The dismissal of the defendants added without objection, or the addition of whom has been submitted to, is certainly not contemplated, and must tend to further needless expense.

For these reasons we reverse the order appealed against, and direct that the Subordinate Judge proceed conformably to the law as here set forth. The costs of the parties are to be costs in the final adjudication of the case.

Order reversed.