

Before Mr. Justice Kemp and Mr. Justice Glover.

1869  
May 27.

JAGOMAHAN SAHU AND OTHERS (DEFENDANTS) v. MANI LAL CHOWDHRY (PLAINTIFF).\*

*Act VIII. of 1859, s. 8—Joinder of Causes of Action.*

The plaintiff sued in the Moonsiff's Court for possession of his house, and for rent. *Held*, these were two causes of action, which could be properly joined in one suit, and that although the amount of rent sued for was within the jurisdiction of the Small Cause Court, yet, as the Small Cause Court could not give all the relief sought, the suit was properly brought in the Moonsiff's Court.

Baboo *Rupnath Banerjee* for appellant.

Baboo *Bama Charan Banerjee* for respondent.

GLOVER, J.—The points taken in the special appeal are : that the plaintiff ought not to have joined in one suit two separate causes of action ; that he ought to have brought a separate suit for the rent of the house ; that he ought to have brought that suit in a Court of Small Causes, from which decision there would be no special appeal ; and that as he did not bring that suit in a Small Cause Court, his claim ought to have been at once dismissed.

This objection does not seem to have been taken before at any stage of the proceedings. We think, moreover, that there is no force in it. The plaintiff's suit is to recover possession of his house, and to get at the same time the rent due from the recusant tenant ; the Small Cause Court therefore was clearly powerless to give him all the relief he sought. In similar cases it has been held, that where there is a Court that can grant full and entire relief, the plaintiff is authorised to bring his suit in that Court, although a portion of his claim may possibly be cognizable by another Court. In this case the only thing a Small Cause Court could have taken cognizance of was the demand for rent, whereas the Civil Court could take up and dispose of both portions of the plaintiff's case. We think also that there was no misjoinder, and the plaintiff's causes of action might very properly have been joined together in the same suit under the provisions of section 8 of Act VIII of 1859.

We dismiss the special appeal with costs.

KEMP, J.—I am of the same opinion. In illustration of the correctness of Mr. Justice Glover's judgement, I would quote the case of a party suing under clause 6, section 23 of Act X, of 1859 ; if he sues for possession alone, the Collector can take cognizance of the suit, but if he sues for possession and *wasilat*, he must go into a Civil Court.

\*Special Appeal No. 583 of 1869, from a decree of the Subordinate Judge of Patna, dated the 15th December 1868, affirming a decree of the Moonsiff of that district, dated the 31st January 1868.