

Before Mr. Justice E. Jackson and Mr. Justice Ainslie.

1871
May 3.

BISWANATH BHUTTACHARJEE AND OTHERS (PLAINTIFFS) v. THE COLLECTOR OF MYMENSING AND OTHERS (DEFENDANTS).

Joint Property—Suit to set aside Sale for Arrears of Government Revenue—Separation of Claims.

A., B., C., D., and E. were joint lessees, without specification of shares, under Government, of a certain mehal. The estate was sold for arrears of revenue. A., B., C., D., and E. each brought a suit separately to set aside the sale.

Held, that as the estate was single and indivisible, and the cause of action and relief sought in each case was the same, the claim of the lessees could not be split into distinct suits.

THERE was a certain mehal, No. 5021, which was settled by Government with seven persons, jointly, without specification of any shares, for a term of fifty years at a jumma of Rs. 721-10-10 per annum. These grantees remained in joint possession, paid the revenue jointly in one lump sum, and had no batwara, either private or under the Act, between them, but simply divided the proceeds in money among themselves.

This mehal fell into arrears as regards the payment of the revenue. On the 19th of May 1868, the Collector sold the mehal by auction for the arrears due under clause 3, sections 23 and 25 of Regulation VIII of 1799, and it was purchased by two individuals.

The heirs and representatives of the original grantees, who were in possession at the time of the sale, divided themselves into five different parties and instituted five separate suits—each suit representing a right to a certain specified share of the property—to set aside the sale of the mehal as having been made irregularly and contrary to law, making the Collector and the two purchasers defendants in each suit. These suits were all tried together by the Moonsiff and dismissed on the grounds that as the plaintiffs in each suit had no certain specified and fixed share of the property, each suit ought to be valued at the full market rate of the entire mehal; for the object of each suit was to obtain a declaration that the sale of the entire mehal was invalid and that as there was no sale piecemeal, there could be no declaration that fractional portions of the sale were invalid. He was further of opinion that all the plaintiffs, their cause of action and subject-matter of the suit being exactly the same, and the defendants being the same, ought to have joined and brought one suit.

The plaintiffs appealed to the District Judge, who wholly concurred with the Moonsiff's decision, and dismissed the appeals.

The plaintiffs next appealed in all these cases to the High Court.

* Special Appeals, Nos. 2455, 2456, 2457, 2458, and 2459, of 1870; from the decrees of the Subordinate Judge of Mymensing, dated 26th August 1870, affirming the decrees of the Moonsiff of that district, dated 30th December 1869.

1871
 UPON the cases coming on for hearing in the High Court (E. JACKSON and AINSLIE, JJ.), Baboo *Srinath Das*, on behalf of all the appellants in the several appeals, stated that he had no objections to have the suits consolidated into one. Baboo *Annada Prasad Banerjee*, on behalf of the Government, agreed to the consolidation of the suits into one upon the appellants at once paying into this Court all the costs sustained by the defendants up to date.

Baboo *Srinath Das* and *Kasi Kant Sen* for the appellants.

Baboo *Nalit Chandra Sen*, *Annada Prasad Banerjee*, and *Jagadanand Mookerjee* for the respondents.

The judgement was delivered by,

JACKSON, J.—We think the lower Courts were quite right to refuse to allow these suits to be carried on as they have been instituted. Five plaintiffs who are co-shares in a certain tenure, have brought five different suits to recover each his own separate share in that tenure. Independent of the question whether under such circumstances each different co-sharer would not be obliged to pay a sufficient stamp covering the whole tenure (which we are inclined to think he would, though we do not directly decide the point), we think the suits cannot be allowed to proceed in this shape. It is very clear that all the parties were ready to bring their suits, inasmuch as they have brought these suits almost at the same time. I believe they have employed the same vakeels; certainly they have employed the same vakeels in this Court; and there seems to be no reason whatever why they should not employ the same vakeels. It is not right that the defendants should be harassed by these five different suits when one suit is sufficient.

It has been thrown out that this has been done in order to remove the jurisdiction from the Subordinate Judge to the Moonsiff. It is immaterial whether it was done with that intention or not, the result is that that is the effect of bringing these suits in the manner in which they have been preferred. As the plaintiff's vakeel states that he has no objection to their being consolidated into one suit, we direct that they shall be consolidated, and we set aside the order dismissing those suits, and we direct that the cases shall be sent to the Court of the Subordinate Judge, who will take them up as one case and proceed to trial as if the case had been instituted before him. But before this order will have effect, we think that the plaintiff is bound to pay into Court all the costs which have been incurred by the defendants up to this date. We therefore allow the plaintiff one month's time to pay into Court all such costs; and if the money is paid in within that time this order will stand good, if not, these appeals will be dismissed. Let the costs incurred in this Court be certified to the Court of the Subordinate Judge.