

1863.
March 9.
S. A. No. 63.
of 1862.

to such objection, if any, as are made consistently with that section: Mr. Branson grants that the Civil Judge's decision is not contrary to law or usage, and that there has been no substantial error or defect *in law* in the procedure or investigation of the case; and we must accordingly dismiss this appeal.

FRERE, J. concurred.

Appeal dismissed.

APPELLATE JURISDICTION. (a)
Special Appeal No. 576 of 1861.

NĀYAN MANNI and others.....*Appellants.*

GODA SHANGARA.....*Respondent.*

Before the enactment of Act VIII of 1859, a suit could not be brought for a mere declaration of title without consequential relief.

A suit cannot be brought against several defendants to eject one and to obtain a declaration of title against the rest.

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THIS was a special appeal from the decision of E. Collin, the Principal Sadr Amin of Cochin, in Appeal Suit No. 128 of 1857, affirming the decree of the District Munsif of Vellanjode, in Original Suit No. 35 of 1855. The suit was brought to eject one defendant, the 108th who did not appear, and to obtain a declaration of right against the two hundred and twenty-one others. The Munsif and, on appeal, the Principal Sadr Amin decreed for the plaintiff. Eight of the defendants now specially appealed.

Branson (Sadagopāchārlu and Kājagopālachārlu with him) for the appellants.

Norton (Karunāgara Menavan with him) for the respondent, the plaintiff.

A written judgment, from which the following is an extract, was delivered by

STRANGE, J.:—At the period when this suit was brought no law existed sanctioning suits for mere declaration of title without prayer for consequential relief. Upon this ground alone that part of the action with which we are now dealing

(a) Present: Strange and Holloway, J. J.

was in our opinion, untenable. Having a remedy to seek, namely the ejectment of tenants denying his title, the plaintiff was not warranted in demanding merely to have his title recognized, reserving to himself whatever other steps he might see fit to take with regard to his recusant tenants. Equally unwarranted was he in bringing a suit of this mixed order. Having been required by the late Sadr Court to sue all his tenants conjointly, the plaintiff had certainly no course left him but to take the step indicated to him, and of the propriety of such a step, when so directed, we do not feel called upon to judge. But we must certainly objected to an action such as the present, wherein the plaintiff, in dealing with his alleged tenants, seeks to eject one of them, and to attain no more than a declaration of title as respects the rest. He was bound, if ejectment was his aim, so to have shaped his action as regards all the tenants; or, if declaration of title was what he required, and the law at the time of the suit sanctioned a suit of such a description, to have confined his suit to that special subject.

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We consider that part of the suit with which we are occupying ourselves not sustainable, for the reasons above given, and we are furthermore of belief that the suit has been framed in its present shape evasively, in order to permit of its institution before a judicatory which could not have entertained it had the plaintiff set forth his demands in all their proper fulness.

We consequently reverse all such parts of the decrees below as affect any of the defendants but the 108th, and we dismiss the suit with costs as regards all the other defendants.