Appellate Jurisdiction(a)

Special Appeal No. 570 *of* 1872.

ARUNACHELLA TE'VAR..... .....*Special Appellant.*

VENCATASA'MI NAIK.....*Special Respondent.*

Plaintiffs, members of a Pagoda Committee appointed under Act XX of 1863, sued defendants for the recovery of Rupees 4,480-2-0. The plaint alleged that, in October 1865, the 1st defendant and another agreed to travel and collect subscriptions for the purpose of erecting a tower at the entrance of the pagoda in question, paying to the pagoda Rupees 130 a month during the period they should be engaged in the work, irrespective of the actual collections. That an agreement to this effect was executed, and 1st and 2nd defendants deputed to collect subscriptions. That both were engaged in the work until November 1869. That under the terms of the said agreement a sum of Rupees 6,500 was due, of which only Rupees 2,019-14-0 were credited in the accounts of the pagoda. That 1st and 2nd defendants, when required to account for the balance, informed the plaintiffs that they had paid to the 3rd defendant, the then manager of the said temple, Rupees 5,330, and that only Rupees 1,170 was due by them. The present suit was accordingly filed against the defendants for the sum of money due by them. The Court of First Instance decreed against 3rd defendant alone. On appeal, the Civil Judge dismissed the suit as against the 3rd defendant on the ground of multifariousness, he having been sued on the ground of misappropriation, while the cause of action against the 1st defendant was breach of contract. *Held*, on Special Appeal, that the suit was not multifarious. That the 3rd defendant was properly included in the suit as a defendant and did not appear to have been prejudiced in his defence by the course of the proceedings.

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THIS was a Special Appeal against the decision of J. D. Goldingham, the Civil Judge of Madura, in Regular Appeal No. 42 of 1872, reversing the Decree of the Court of the Principal Sadr Amín of Madura, in Original Suit No. 176 of 1869.

The plaintiffs, as members of the Committee appointed for managing the affairs of the Pagoda of Dundayudapany at Palani, sued for the recovery of Rupees 4,480-2-0, being the balance of subscriptions collected by the 1st and 2nd defendants under the terms of a karár executed by the 1st defendant and another on the 27th October 1865, for erecting a gopuram, or tower, at the entrance of the said pagoda. The plaint alleged that, on the 27th October 1865, the 1st defendant and another named Subbaya Gúrukal undertook to travel to different parts of the country and collect subscriptions for the purpose above indicated, paying to the pagoda a sum of

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Rupees 130 a month during the period they were engaged in the work, irrespective of the actual collections; that on their executing a karár or agreement to that effect, 1st defendant was formally deputed, in company with the 2nd defendant, to collect subscriptions, and both were engaged in the work till November 1869; that under the terms of the said kárárnamah a sum of 6,500 Rupees was due from the date thereof to November 1869, of which only Rupees 2,019-14-0 was credited in the accounts of the pagoda; that the 1st and 2nd defendants on being required to account for the balance, informed the plaintiffs that they had paid to the 3rd defendant, the then manager of the said temple, sums amounting to Rupees 5,330; that only 1,170 Rupees was due by them up to the end of November 1869, and that the 3rd defendant having failed to account for the difference between the sums paid by the 1st defendant and the amount credited in the accounts of the pagoda, the suit was filed for the recovery of the same, as well as the sum of Rupees 1,170 due by the 1st and 2nd defendants.

The 1st defendant in his written statement denied the correctness of the plaint, or his liability to pay any portion of the amount claimed. He admitted having executed the karár referred to in the plaint and collected subscriptions from different parts of the country, but declared that he had paid to the 3rd defendant, on different dates, sums amounting to Rupees 5,513-4-0, and obtained from him receipts for the same; that the 3rd defendant alone was bound to account for the said Rupees 5,513-4-0, and that nothing was due from March to November 1869, as no journeys were undertaken to raise subscriptions during those months.

The 2nd defendant did not appear.

The 3rd defendant in his written statement pleaded that the plaintiffs as members of the Committee were not competent to bring this suit; that no leave had been obtained by them from the Civil Court authorizing them to institute this suit as required by Section 18, Act XX of 1863; that the plaintiffs' claim was barred by the Act of Limitation; that the causes of action against the 1st and 2nd defendants and the 3rd defendant were distinct, and should not have been included in the

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same suit; that the plaint did not disclose any cause of action against the 3rd defendant, nor the date when it accrued; that he (3rd defendant) with the permission of the plaintiffs remitted a portion of the amount due by the 1st defendant under the said karár and entered the same in the accounts as well as in the karár itself; that the karár having thus been modified, the plaintiffs had no right to claim the sum which the 1st defendant therein engaged to pay.

The Principal Sadr Amín held that Section 28 of the Civil Procedure Code, which was relied on by the 3rd defendant's Pleader, did not prohibit the members of the Pagoda Committee, who were invested under Section 12, Act XX of 1863, with the powers exercised by the Board, or local agent, from filing suits; that Section 18, Act XX of 1863, did not apply to this case, as the 3rd defendant was no longer the manager of the temple; that the plea of misjoinder of causes must be overruled, because the object of the suit was to compel the defendants to account for sums collected by 1st and 2nd defendants and those received by the 3rd defendant. The Principal Sadr Amín further found that the terms of the karárnámah B were not altered subsequent to its execution, and that no part of the amount due under it by the 1st defendant was remitted by the 3rd defendant with the plaintiff's permission; that he (3rd defendant) was, therefore, bound to make good to the dévastánam Rupees 3,318-2 as shown by the accounts, and that the 1st and 2nd defendants were not bound to make payments for the period in which they did not travel. For these reasons the Principal Sadr Amín adjudged the 3rd defendant to pay to the plaintiffs, for and on account of the said pagoda, the sum of Rupees 3,318-2, with proportionate costs and interest from date of decree to the date of payment at 6 per cent. per annum; rejected the rest of the plaintiffs' claim, and relieved the 1st and 2nd defendants from liability, charging plaintiffs with their costs.

From this decree the 3rd defendant appealed.

The Civil Judge delivered the following judgment—

"In this case there has been a complete misjoinder of the causes of action. The plaint is professedly brought upon a

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karárnámah executed by the 1st and 2nd defendants to the 3rd defendant, the late manager of the Palni dévastánam, and the relief asked for is that the sum due under the said karárnámah may be recovered either from the 1st and 2nd defendants, or from the 3rd defendant, on the ground that if 1st and 2nd defendants' statement that they paid the money to 3rd defendant be true, the 3rd defendant is answerable to the pagoda. It is quite clear that the course adopted by the Court below was irregular. The Judge should have asked plaintiffs—Do you claim from 1st and 2nd defendants on the ground of their breach of contract, or do you sue 3rd defendant on the ground of misfeasance? For there is clearly no community of interest between these several defendants. The Principal Sadr Amín has found that the 1st and 2nd defendants have discharged all the sums due by them, and has saddled the 3rd defendant with the amount. The 3rd defendant appeals on the ground that he has been materially prejudiced by the action of the Court below, that he should be called upon to meet the evidence adduced by plaintiffs and not that adduced by his co-defendants, with whom, as I said before, he has no community of interest. I concur in this objection, which I notice was started in the Court below, for if you strike at 1st defendant's statement that he and 2nd defendant paid the money to the 3rd defendant, and the evidence adduced by them in support of their defence, there is nothing to show that 3rd defendant failed in carrying this sum to account, and that he is liable for his misfeasance. The case must, therefore, be taken as a suit brought, as alleged in the plaint, upon the karárnámah, for sums due under it by the 1st and 2nd defendants. The 1st and 2nd defendants have been relieved from liability by the decree of the Court below on the ground of their having discharged their debt to the institution, and as there is no cross appeal against this decree, it follows that there is an end of this contention, and it is unnecessary for me to consider whether the agreement constitutes a valid obligation or not. With respect to any act of misfeasance on the part of 3rd defendant, it must be adjudicated upon in a separate action, as the grounds of complaint and injury sustained are totally different, and for this reason the decree of the Lower Court passed against him is reversed, the plaintiffs paying all costs of suit, without pre-

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judice to their right to sue him again on a plaint properly prepared, setting forth the true grounds of action."

The 2nd plaintiff specially appealed on the grounds :—

I. There was a complete cause of action against 3rd defendant as set out in the pleadings.

II. There was no misjoinder.

III. The decree of the original Court completely decided all points in issue between the parties.

IV. The 3rd defendant was in no way prejudiced, for all his evidence was heard and he had no more to offer.

Johnstone, for the special appellant, the 2nd plaintiff, contended that the suit was not multifarious: there was a complete cause of action for account against all three defendants. He cited *Parr* v. *The Attorney-General*, 8, Cl. & F., 409, and *Manners* v. *Rowley*, 10, Sim., 470, which latter case, he submitted, was on all fours with the present. He further contended that there was nothing in the Civil Procedure Code preventing such a suit being brought.

Handley, for the special respondent, the 3rd defendant, contended that the English cases cited did not apply. This case is governed by the Civil Procedure Code, the 8th Section of which is the only one enabling different causes of action to be joined. It, however, applies only to causes of action *by and against the same parties*, which implies that causes of action against different parties cannot be joined.

Johnstone, replied.

The Court delivered the following

JUDGMENT:—The Civil Judge has dismissed this suit as against the 3rd defendant on the ground of multifariousness, the 3rd defendant having been sued on the ground of misappropriation, while the cause of action against the 1st defendant was breach of contract.

We find, however, that the plaintiffs in substance sued for an account of a certain fund, of which a part had admittedly been paid into the hands of the 3rd defendant, and, as he was evidently interested in the question how much had been paid to him by the other defendants, we think that he was properly included in the suit as a defendant, and we fail to see

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that he was prejudiced by the course of the proceedings, in which he appears to have had ample opportunity of proving his case.

We must, therefore, reverse the decree passed by the Civil Judge, and remand the appeal for decision on the merits.

The Civil Judge in his final decree will make provision for the payment of the costs hitherto incurred.

Appeal allowed.

Original Jurisdiction(a)

Original Suit No. 262 *of* 1872.

MULLA JAFFARJI' TYEB ALI SAIB

against

YACALI KA'DAR BI' and others.

A Commissariat Officer named Mackellar had a butler named Lalah Miyah, who was employed to put forward with the money of Mackellar, or his own, various large contracts. Two accounts were opened in several houses of agency in the names of Mackellar and Lálah Miyah. To secure himself, Mackellar caused Lálah Miyah to execute a Will leaving his whole estate to Mackellar. Testator and legatee perished together in the *Persia* steamship, in 1864. The Administrator-General of Madras administered to Lálah Miyah's estate, but the personal representatives of Mackellar contested the right of the Administrator-General to pay over the fund to those of Lálah Miyah. The result was that Lálah Miyah's representatives, the present defendants, were driven to a suit to establish their rights. Not having funds to prosecute that suit, Lálah Miyah's representatives were recommended by their attorney, C, to apply to one Jaffarjí Tyeb Ali (the present plaintiff) who was also a client of C's, for the necessary funds. Jaffarjí consented to advance money for the purposes of the suit and on the 28th July 1869 a so-called Deed of mortgage, drawn up by C, was executed between the present defendants as mortgagors and the plaintiff, Jaffarjí, as mortgagee, whereby in consideration of an advance of the sum of Rs. 5,000 (the receipt of 1,800 Rs. of which was by the instrument acknowledged) to be made by Jaffarjí to such attorney as he should select, before the 31st of December 1869, the defendants mortgaged every thing to which they might be entitled or recover by suit, the mortgage to be defeasible on payment of 50 per cent. of what they might recover by suit, and a further 50 per cent. upon all to which they might be entitled as the persons entitled to Lalah Miyah's estate. They also covenanted to repay the money lent with interest. The present defendants succeeded in their suit against the representatives of Lálah Miyah, and this suit was brought by Jaffarjí to recover a commission of 50 per cent. on the sum recovered, and the sums advanced, with interest. Defendants denied that plaintiff had fulfilled his part of the agreement and alleged that in consequence of his neglecting to supply funds they had been compelled to borrow of a third party. They also pleaded that the agreement was void for champerty and maintenance. *Held*, that by the Law of England, which prevailed in the present suit, this contract was clearly void, being contrary to the plain provision of the Common and Statute Law against maintenance, and that it

(a) Present: Holloway, J.