

1897

ISHAN  
CHUNDER  
HAZRAv.  
RAMESHWAR  
MONDOL.

Babu *Nolini Ranjan Chatterjee* in reply cited *Abdul v. Ayaga* (1); *Sami Chetti v. Ammani Achy* (2); *Ackjoo Bibee v. Lallah Ram Chunder Lall* (3); and *Omur Ali v. Weylayet Ali* (4).

C. A. V.

The judgment of the Court (O'KINEALY and HILL, JJ.) was as follows :—

In this case the plaintiffs sued on the ground that they were reversioners on the death of one Brahmamayi Debi for the possession of land, in other words, in ejectionment. The cause of action, namely, what the plaintiffs were bound to prove in order to succeed, was that they were the reversioners of Brahmamayi in regard to this property, and that the claim was not barred by limitation. The defendants then could raise any answer they thought fit to get rid of the claim; but the cause of action was one. Even in England, in an action in ejectionment, all the parties in possession are joined. We think, therefore, that the decision of the Court below is wrong; and, setting it aside, we remand the case to the lower Court for trial on its merits. Costs to abide the result.

H. W.

*Appeal allowed. Case remanded.*

*Before Mr. Justice O'Kinealy and Mr. Justice Hill.*

SAFIUR RAHMAN (DEFENDANT) v. MAHARAMUNNESSA BIBI AND OTHERS (PLAINTIFFS), AND OTHERS (DEFENDANTS).<sup>a</sup>

1897  
May 20.  
June 28.

*Specific Performance—Joint contractees—Right of one contractee to specific performance against the wish of the others—Specific Relief Act (1 of 1877), section 16.*

Under a single contract to convey land to several persons it is not open to some of the joint contractees to enforce specific performance of the contract if the other contractees refuse to have specific performance.

THE defendant No. 1 purchased, at an auction sale, certain lands belonging to the other defendants and the plaintiffs. He subsequently agreed to execute separate re-conveyances in favour

<sup>a</sup> Appeal from Appellate Decree No. 1205 of 1895 from the decision of Babu Brojendra Kumar Seal, District Judge of Burdwan, dated the 22nd April 1895, affirming the decision of Babu Rajendra Kumar Bose, Subordinate Judge of Burdwan, dated the 29th September 1893.

(1) I. L. R., 12 Mad., 234.

(2) 7 Mad. H. C., 260.

(3) 23 W. R., 400.

(4) 4 C. L. R., 455.

of each co-owner, upon receiving Rs. 500 in addition to the price he had paid for the lands.

The plaintiffs desired performance of the contract; but the other co-owners did not, and they refused to join the plaintiffs in a suit against the contractor. The plaintiffs accordingly made them defendants.

The Subordinate Judge decreed the suit; and his decision was upheld on appeal to the District Judge.

The defendant No. 1 (the contractor) appealed.

Mr. *Khundkar* and *Babu Haro Chunder Chukerbutty* appeared for the appellant, and argued that the contract was not one, but many; that the suit was bad for multifariousness; and that, as some of the contractees did not desire specific performance, the suit ought not to have been decreed.

*Moulvi Mahomed Mustafa Khan* (with him *Dr. Rash Behari Ghose*) contended that the contract was severable, and that the case fell within section 16 of the Specific Relief Act. If one joint landlord refuse to join the others in a suit for rent, they may sue alone; and the same principle should be applied to the present case.

C. A. V.

The judgment of the Court (O'KINEALY and HILL, JJ.) was as follows:—

The defendant No. 1, the appellant, made a joint contract with several persons that, "on receipt of Rs. 500 as profit in addition to the price paid by him for the property," he would execute separate documents in favour of each person.

Some of the parties who entered into that contract with the defendant No. 1 claim specific performance of the contract, making the others, who refused to have the contract performed, defendants.

The question, therefore, is, can some of the parties to a single contract enforce specific performance against their adversary and the other persons who are defendants?

We think, on principle, that they cannot, and that in a suit for the performance of a single contract the parties on each side must be marshalled as plaintiffs and defendants. We therefore decree the appeal, and dismiss the suit with costs in all the Courts.

H. W.

*Appeal allowed.*