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

ISHAN CHUNDER HAZRA AND OTHERS (PLAINTIFFS) *v.* RAMESWAR MONDOL AND OTHERS (DEFENDANTS.) *

1897 *June 7 and* 29.

Ejectment, Suit for—Suit against several defendants—Cause of action.

In a suit for ejectment against several defendants who set up various titles to different parts of the land claimed there is only one cause of action, not several distinct and separate causes of action.

So *held*, setting aside the decree of the District Judge who had dismissed the suit for misjoinder of causes of action.

THIS was a suit in ejectment by the plaintiffs as reversioners of one Brahmamayi Debi. The defendants set up their respective titles to different plots of the land by purchase from Brahmamayi Debi. The Munsif decreed the suit in part; but on appeal to the District Judge, the judgment and decree were set aside on the sole ground that there were distinct and separate causes of action, and that the suit was bad for misjoinder of them. The plaintiffs appealed.

Babu *Nolini Ranjan Chatterjee*, for the appellants, having opened the appeal, the Court called upon

Babu *Harendro Narain Mitter* who appeared for the respondents.

He argued that as there was no evidence of combination among the defendants, and as the land was claimed by the defendants under distinct titles, the suit was bad for multifariousness. [O'KINEALY, J.—The decisions in *Vasudeva Shanbhaga* v. *Kuleadi Narnapai* (1) and *Mahomed* v. *Krishnan* (2) are against you]. It had been held, in a similar case, that the plaintiff should elect which of the defendants he would proceed against—*Narsingh Das* v. *Mangal Dubey* (3); *Ram Narain Dat* v. *Anunda Prosad Joshi* (4).

* Appeal from Appellate Decree No. 1813 of 1895 from the decision of G. Gordon, Esq., Officiating District Judge of Birbhum, dated the 8th August 1895, reversing the decision of Babu Ram Churn Mullick, Munsif of Bolepur, dated the 6th August 1894.

(1) 7 Mad. H. C., 290.
(2) I. L. R., 11 Mad., 106.
(3) I. L. R., 5 All., 163.
(4) I. L. R., 14 Calc., 681 (687).

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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 ejectment. 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 ejectment, 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).*

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 (I 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

* 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.