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The orders of the Subordinate Judge in both cases are accordingly set aside, and the judgment and decree of the Munsif dismissing the suits of the plaintiffs with costs is restored.

These appeals are decreed with costs.

S. C. G. *Appeal allowed.*

Before Mr. Justice Rampini and Mr. Justice Pratt.

SERAJUL HUQ KHAN
v.
ABDUL RAHAMAN. *

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January 30.

Misjoinder of parties and causes of action—Civil Procedure Code (Act XIV of 1882) ss. 28 and 45—Suit by a purchaser of a property for possession against a person who dispossessed him, as also against the vendor for the refund of the purchase money, whether maintainable.

On a suit brought by the plaintiff for recovery of possession of land against defendant No. 1 (the person by whom the plaintiff was dispossessed) after declaration of his right as purchaser from defendant No. 2; for an order for the registration of the plaintiff's name under the Land Registration Act (VII of 1876); for mesne profits and also for a refund of the purchase money from the defendant No. 2 in case the plaintiff's claim against defendant No. 1 failed, the defence was that the suit was bad for misjoinder of parties and causes of action.

Held that the suit was not bad for misjoinder of parties and causes of action.

Hanuman Kamat v. *Hanuman Mandur* (1) and *Rajdhur Chowdhry* v. *Kali Kristna Bhattacharjya* (2) referred to.

THE plaintiff, Serajul Huq Khan, appealed to the High Court.

This appeal arose out of an action brought by the plaintiff for recovery of possession of land, as also for refund of purchase money, against defendants Nos. 1 and 2. The allegation of the plaintiff was that defendant No. 2 sold the disputed land to him on a proper consideration and that he obtained possession of the said land; that defendant No. 1 dispossessed him of the said land; and hence the suit was brought for recovery of possession after

* Appeal from order No. 417 of 1900, against the order of Babu Manmotho Nath Chatterjee, Subordinate Judge of Dacca, dated the 19th of September 1900, reversing the order of Babu Hari Chunder Sen, Munsif of Dacca, dated the 18th of November 1899.

(1) (1891) I. L. R. 19 Calc. 123. (2) (1882) I. L. R. 8 Calc. 963.

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declaration of the plaintiff's right as purchaser from defendant No. 2, for an order for registration of his name under Act VII of 1876 and for mesne profits and also for the refund of the purchase money from defendant No. 2 in case the plaintiff's claim against defendant No. 1 failed. The defence *inter alia* was that the suit was bad for misjoinder of parties and causes of action. The Court of first instance, having held that the suit was bad for misjoinder of parties and causes of action, dismissed it. On appeal the learned Subordinate Judge, although he held that the suit was badly framed, yet remanded the case, holding that the learned Munsiff should have given an opportunity to the plaintiff to elect either of the causes of action and to proceed with the suit.

Babu Lal Mohun Das for the appellant.

Babu Horendra Narayan Mitter for the respondents.

RAMPINI and PRATT JJ. This is an appeal from an order of the Subordinate Judge of Dacca, dated the 19th of September 1900.

The suit is brought for recovery of possession of land, after a declaration of the plaintiff's right as purchaser from the defendant No. 2, for an order for the registration of the plaintiff's name under Act VII of 1876, for mesne profits, and also for a refund of the purchase money from the defendant No. 2 in case the plaintiff's claim against the defendant No. 1 fails.

The Court of first instance held that there was misjoinder of parties and causes of action and dismissed the suit. The plaintiff appealed to the Subordinate Judge, who held that there had been misjoinder in both respects. But he was of opinion that the Court of first instance should have given an opportunity to the plaintiff to elect the cause of action on which he wished to proceed with the suit; and he therefore set aside the decree of the first Court and remanded the case to the Munsif in order that he might give the plaintiff the opportunity, which he considered that he should have had.

The plaintiff now appeals to this Court, and urges that there has been no misjoinder of parties or causes of action.

We think that this plea must prevail. The plaintiff purchased the land from the defendant No. 2. Then, subsequently, after

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taking possession he was dispossessed by the defendant No. 1, who has obtained registration of his name under Act VII of 1876. Now the plaintiff seeks, in consequence of his dispossession, to recover possession of the land. He asks for a decree for possession against the defendant No. 1, and, if he cannot succeed in recovering possession of the land, he seeks for a refund of the purchase money paid by him to the defendant No. 2. There therefore would seem to be one cause of action in this case, namely, the dispossession of the plaintiff from the land. True it is that the plaintiff seeks for alternative reliefs; but this does not make the suit one in which two causes of action are combined.

Then, it is clear that the defendant No. 2 is a necessary party to the suit: for the plaintiff is bound to bring in the defendant No. 2 in any suit which he brings against the defendant No. 1 for recovery of possession of the land. Similarly, when he sues the defendant No. 2 for a refund of the money, he is bound to bring in the defendant No. 1, so that he may have it decided in the presence of both parties that the defendant No. 2 had no right to sell him the land. The suit would therefore seem to be properly framed under section 28, C. P. C. But even if it be assumed for the sake of argument that two causes of action have been combined in the suit, then it would appear to us that under section 45, C. P. C. we have the power to allow, and would be justified in allowing, two causes of action to be united in this case, inasmuch as it is convenient that the matter should be disposed of in one suit rather than in two.

The learned pleader for the appellant has cited two cases in support of his argument, namely, the case of *Hanuman Kamat* v. *Hanuman Mandur* (1) and that of *Rajdhur Chowdhry* v. *Kali Kristna Bhattacharjya* (2). In the first of these cases it has been laid down by their Lordships of the Privy Council that a cause of action against one defendant will arise upon objection being made to the sale to him by another defendant. Therefore, it would not be safe for the plaintiff to wait until the disposal of the case against the defendant No. 1 before bringing a suit against the defendant No. 2. In the second case above cited the plaintiff

(1) (1891) I. L. R. 19 Calc. 123. (2) (1882) I. L. R. 8 Calc. 963.

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brought a suit seeking to have his right declared to certain property in the presence of all the co-sharers of the property, and in the alternative for a refund of the purchase money from one of the defendants, and it was held that such a suit was properly framed. We think that these cases are in support of the view of the appellant.

The pleader for the respondents, on the other hand, calls our attention to the case of *Mullick Kefait Hossein* v. *Sheo Pershad Singh* (1). That case does not seem to have any bearing upon the present case, because in that case there were distinct causes of action against different sets of defendants severally. However this may be, we think that this is eminently a case in which justice requires that the suit should proceed against both the defendants, as it appears to us not only that there is one cause of action, but that the defendants are both interested in the subject matter of the suit.

We accordingly decree this appeal and, setting aside the order of the Subordinate Judge, remand the case to that officer, who will remand it to the Munsif for trial on the merits.

The costs of the proceedings up to date will abide the result.

S. C. G. *Appeal allowed. Case remanded.*

ORIGINAL CIVIL.

Before Mr. Justice Stanley.

12.

ROJOMOYEE DASSEE
v.
TROYLUKHO MOHINEY DASSEE.*

Hindu law—Will,- construction of—Administration suit, by reversioner—Idol, gift to—Idol not in existence at the time of the testator's death—Direction to executors to establish—Gift to a class—Administration, concurrent suit for—Practice—Conduct of proceedings.

Under Hindu law a person entitled to an estate in reversion expectant on the death of a Hindu widow is entitled to bring a suit for administration.

Clowes *v.* Hilliard (2) distinguished.

* *Suit No. 662 of 1894.*

(1) (1896) I. L. R. 23 Calc. 821. (2) (1876) L. R. 4 Ch. Div. 413.