Before Mr. Justice McDonell and Mr. Justice Beverley.

LOKE NATH SURMA AND OTHERS (PLAINTIFFS) *v.* KESHAB RAM DOSS AND OTHERS (DEFENDANTS).* 1886 *April* 19.

Multifariousness—Misjoinder of causes of action—Civil Procedure Code, 1882, *s.* 28—*Suit for declaratory decree—Specific Relief Act* (*I of* 1877), *s.* 42.

The plaintiffs having obtained a decree for the possession of certain lands and having received formal possession thereof, brought a suit against 86 persons holding distinct and separate tenures in those lands, on the allegations that, "on the plaintiffs attempting to measure the lands, and calling on the tenants to pay rent, ten of the defendants described as *prodhans* or headmen formed a combination and gained over the other defendants with a view to injure the plaintiffs; that through their help and endeavour the remaining defendants failed to recognize the plaintiffs as landlords, and declined to pay any rent or to allow them to measure the lands, driving away an Amin who went to measure the lands on behalf of the plaintiffs, and thereby preventing the plaintiffs from exercising their proprietary rights; that the plaintiffs brought suits for rent against some of the defendants, and in those suits the defendants denied the plaintiffs' title as landlords, whereupon the plaintiffs seeing the necessity of instituting a suit for declaring the defendants tenants of the land withdrew the suits for rent." They stated their cause of action to "be the defendants' act of not recognizing us as their landlord and thereby preventing us exercising our proprietary rights in respect of the land in suit, and not allowing us to make a measurement of that land, and also withholding the payment of rent"; and prayed for a decree establishing their proprietary right and declaring the defendants to be their tenants. *Held*, that there was but one and the same cause of action against all the defendants, *viz.*, a combination to keep the plaintiffs out of the enjoyment of the property they had purchased; and that the suit was not multifarious within s. 28 of the Civil Procedure Code. *Held*, also, that the declaratory decree prayed for could be made notwithstanding the plaintiffs might have asked for possession of the lands.

THE judgment appealed from in which the facts are fully stated was as follows:—

"The plaintiffs are the proprietors of two taluks—No. 5, Mahomed Nazim and No. 6, Mahomed Aufar. In the year 1877 they brought a suit against one Nasrat Raja, proprietor of taluk No. 3, for the recovery of certain lands claimed as appertaining

* Appeal from Appellate Decree No. 807 of 1885, against the decree of J. Kelleher, Esq., Judge of Sylhet, dated the 9th February 1885, reversing the decree of Babo Ram Kumar Pal, Rai Bahadur, Subordinate Judge of that District, dated the 4th of July 1884.

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to taluks Nos. 5 and 6, and alleged to be held by the defendant. That suit was decreed by the Subordinate Judge on the 21st June 1877, and it is said formal possession was delivered to the plaintiffs in execution by a Civil Court Amin deputed for the purpose. The plaintiffs now, specifying the boundaries of certain lands aggregating a total area of 65 hals 10 kears, bring the present suit against the tenants of those lands, 86 in number, on the following allegations:—

"(1.) That the lands in the possession of the defendants were included in those delivered in execution of the decree against Nasrat Raja; that defendants or their predecessors were at that time in possession as the tenants of Nasrat Raja, and were all aware of the proceedings in execution of the plaintiffs' decree.

"(2.) That in Pous 1285 B.S., December (1878), plaintiffs attempted to measure the lands in suit, and called on the jotedars (tenants) to pay the rents of those lands; but ten of the defendants, who are described as *prodhans* or headmen, formed a combination, and gained over the other defendants with a view to injure the plaintiffs; and then through their help and endeavour the remaining defendants failed to recognise plaintiffs as their landlords, and declined to pay any rent or to allow the plaintiffs to make the measurement. It is further alleged that they drove away an Amin who went to measure on behalf of the plaintiffs, and thereby prevented plaintiffs from exercising proprietary rights in respect of the lands and suspended plaintiffs' possession.

"(3.) The plaint then proceeds to state that plaintiffs brought several rent suits against the defendants or some of them in the Munsiff's Court; but that in those suits the defendants denied plaintiffs' right by raising the question of title. Whereupon plaintiffs, seeing the necessity of instituting a civil suit for declaring the defendants' tenants of the land, withdrew the rent suits mentioned.

"In paragraph 5 of the plaint the cause of action is stated as follows: "The defendants' act of not recognising us as their landlords, and thereby preventing us to exercise our proprietary right in respect of the land in suit, and not allowing us to make a measurement of that land and also withholding the payment of rent."

"The plaintiffs, therefore, 'pray for a decree establishing the proprietary right of the plaintiffs in respect of 65 hals 10 kears 1 powa of land being under the jote and possession of the defendants, and declaring the defendants as tenants under the plaintiffs, so that the plaintiffs may be enabled to exercise all sorts of proprietary rights in respect of the said property against the defendants,' or for such other relief as the Court should think fit.

"Five of the defendants appeared and objected to the suit on the grounds (1) that it was untenable under the provisions of Act I of 1877; (2) that it was barred by limitation; (3) that it was bad because different causes of action against different defendants separately were joined in a single suit; and (4) that it was bad for non-joinder of parties, because certain persons, alleged to be the actual landlords and in possession and receipt of rent from the defendants, were not made parties. Into the other defences set up it is unnecessary to go more into detail. Defendants denied that the lands held by them were ever included in the suit between plaintiffs and Nasrat Raja, or that they (the defendants) ever paid any rent to Nasrat Raja. They allege that the lands in their tenancy really appertained to taluk No. 2, Korban Raja, that they were themselves owners to the extent of 10 annas, having purchased an 8-anna share from one Ammal Khair Bibi, and a 2-anna share from one Kala Chand Roy; that as regards the remaining 6-annas, they were tenants and paid their rents to the proprietors, who ought to have been joined as parties to the suit.

"At the trial before the Subordinate Judge, a copy of the decree in plaintiffs' case against Nasrat Raja was admitted in evidence against the defendants. Four of the witnesses examined for Nasrat Raja in that suit happened to be included amongst the defendants in the present suit, but they did not appear. However, copies of their depositions in Nasrat Raja's suit were admitted in this suit as evidence, not only against the four defendants themselves, but against the remaining 82 defendants on the record, and his judgment was in a great measure influenced by the former decree and the admissions contained in those depositions. I may here note that the tenancies of the 86 defendants are altogether distinct and separate. It will be observed that, in deciding the sixth issue, the Subordinate Judge relied mainly

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on the admissions contained in the depositions above-mentioned. "Those persons," he adds, "have not been bold enough to make a reply in the present suit, inasmuch as they bound themselves by giving their depositions in the previous suit; but it has been proved by the evidence adduced in this suit that they are in a combination with the defendants who appeared in this suit, and the circumstances of the suit also go to support that," and so of course any admissions made by the witnesses as to their own tenancies became at once evidence with respect to the remaining 82 tenancies. Again in his decision on the seventh issue, the Subordinate Judge refers to those documents and to the admissions contained in the depositions of the four persons examined as witnesses in Nasrat Raja's case.

"In the result the suit was decreed in favour of the plaintiffs, and it was ordered that "the plaintiffs' title to, and possession of, the land in suit be established, and it be declared that the defendants are the plaintiffs' jotedars in respect of that land," and the defendants who appeared were ordered to pay the plaintiffs' costs.

"The objections taken in appeal are substantially the same which were urged before the lower Court. It is contended that the suit is one for which no sanction is to be found in the Procedure Code, and that it is expressly excluded by the provisions of s. 28; that the plaintiffs being able to seek further relief than a mere declaration of title, and having omitted so to do, cannot have a declaration under s. 42 of the Specific Relief Act; that the suit was bad for nonjoinder of the proprietors of the 6-anna share; that it was barred by limitation; that the decree in Nasrat Raja's case and the depositions of the witnesses already mentioned were not admissible in evidence at the trial of this suit, and that in no way could the admissions in those depositions be made evidence against the other defendants to the suit. It was also contended that, if plaintiffs were resisted in their measurement, they had a special remedy provided for them by s. 38, Beng. Act VIII of 1869.

"On the merits of the question of title, the case was argued at length with reference to maps and boundaries and the oral evidence bearing on those points.

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"Under s. 28 of the Procedure Code, only those persons may be joined as defendants against whom the right to any relief is alleged to exist "in respect of the same matter." In the course of the argument I asked plaintiffs' pleader how the relief against the several defendants could be said to exist in respect of the same matter, and his reply was: "When I sent my own men to measure the lands, they resisted and denied my right to measure and thereby my proprietary right." When the plaintiffs are driven to resort to a mere fiction of that sort as a ground of jurisdiction, their case must be very weak. The plain facts are that there are 86 tenants of distinct and separate lands who refuse to pay rent to the plaintiffs, have never paid them any, and deny their title to recover any such rents. The case of each particular defendant is entirely distinct and separate in its subject-matter from that of the other defendants. The provisions of the Procedure Code bearing on this question will be found dicussed in a Full Bench decision of the Allahabad High Court—*Narsing Das* v. *Mangal Dabi* (1), and it is unnecessary for me to say more on the subject. I hold that this suit ought to have been dismissed, because different causes of action against different defendants separately were joined, for which procedure no sanction is to be found in the Code.

"Even if that objection were not fatal to the suit, I should be prepared to hold that a declaration of the nature prayed for, without further relief sought, could not be made under s. 42 of the Specific Relief Act.

"In the above view of the case it is unnecessary to go into the other questions raised by the appeals. It is to the advantage of the parties themselves that the questions at issue between them should be left for decision on legal evidence in suits properly framed for the purpose.

"The decree of the lower Court will accordingly be reversed with costs of both Courts and interest at 6 per cent. per annum."

From this decision the plaintiffs' appealed.

Mr. *Woodroffe* and Baboo *Joygobind Shome* for the appellants.

Munshi *Serajul Islam* for the respondents.

(1) I. L. R., 5 All., 163.

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The judgment of the Court (McDONELL and BEVERLEY, JJ.) was as follows :—

The circumstances of this case are fully set out in the decision of the lower Appellate Court.

It is contended in second appeal that the District Judge is wrong in law: (1) in dismissing the suit on the ground that different causes of action against different defendants separately have been joined together; and (2) in holding that a suit for a mere declaration of title without further relief is not maintainable under s. 42 of the Specific Relief Act.

In deciding the first point, the Judge has relied upon the Full Bench decision of the Allahabad High Court in the case of *Narsing Das* v. *Mangal Dabi* (1), in which it was held that, where several distinct causes of action are alleged against distinct acts of defendants who are not jointly liable in respect of each and all of such causes of action, a suit against all the defendants jointly is bad in law.

In the present case, however, it is contended that the cause of action alleged against all the defendants is one and the same, *viz.*, a conspiracy on the part of all the defendants to keep the plaintiffs out of possession of their property; and we have been referred to the case of *Gajadhur Pershad Narain Singh* v. *Saheb Roy* (2), where a number of ryots were held to have been properly sued in one and the same suit, on the allegation that they had fraudulently used a forged *jamabandi* paper with the view to support certain *mokurari* claims which they put forward, and thereby to oust the plaintiff from the full enjoyment of his proprietary right.

In the present case, the cause of action is said to have accrued in consequence of the defendants not admitting the plaintiffs to be their landlords, not allowing them to exercise their *maliki* rights to the disputed lands, not paying them the rents, and not allowing them to measure the lands (see para. 5 of the plaint). And this cause of action is said to have arisen on the dates on which the written statements were filed in the rent suits which the plaintiffs brought against some of the defendants.

(1) I. L. R., 5 All., 163. (2) 19 W. R., 203.

The allegation in the plaint is that some of the defendants *and the predecessors of others* combined to prevent the plaintiffs from measuring the lands, and further that some of the defendants, who were sued for rent, put in answers denying the plaintiffs' title.

These statements are somewhat vague, and do at first sight give rise to the impression that several distinct causes of action against different sets of defendants are being joined in one and the same suit; but on the whole of the pleadings, we think it must be taken that there was really but one and the same cause of action against all the defendants, *viz.*, a combination to keep the plaintiffs out of the enjoyment of the property which they had purchased.

Only 5 out of the 86 defendants appeared, and their defence was that they had a *maliki* right to a 10-anna share of the lands in suit. This defence was apparently put forward on behalf of the other defendants as well as themselves, though it was at the same time alleged that some of the defendants were acting in collusion with the plaintiffs. The District Judge says:—

The plain facts are that there are 86 tenants of distinct and separate lands who refuse to pay rent to the plaintiffs, have never paid them any, and deny their title to recover any such rents." But the mere fact that these tenants hold distinct and separate lands affords no sufficient reason why they should not be joined as co-defendants in the same suit, if, as the Judge finds as a fact, they have combined to keep the plaintiffs out of possession.

Section 28 of the Code allows all persons to be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or, in the alternative, in respect of the same matter. In the present suit, it is alleged that the right to a declaration of the plaintiffs' title exists against *all* the defendants, inasmuch as they all deny the plaintiffs' right to receive the rents of the land in dispute.

The section in question goes on to say that "judgment may be given against such one or more of the defendants as may be found liable, according to their respective liabilities without any amendment" of the plaint. And s. 31 of the Code provides

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that "no suit shall be defeated by reason of the misjoinder of parties," but that "the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."

By s. 45 a plaintiff is allowed, subject to certain conditions, to join several causes of action against the same defendant, or the same defendants jointly; and if it appears that such causes of action cannot conveniently be tried together, the Court is not to dismiss the entire suit but to order separate trials thereof, or make such other order as may be necessary or expedient for their separate disposal.

We think then that, under the circumstances of the case, this suit ought not to have been dismissed on the ground of misjoinder. In this view we are supported by the decision in *Omur Ali* v. *Weylayet Ali* (1).

Nor in our opinion was the suit liable to be dismissed on the ground that the declaration prayed for could not be made under s. 42 of the Specific Relief Act.

It is contended that the plaintiffs, being out of possession, should have sued to recover possession, and not merely have sued for a declaration of their title. We think that this was unnecessary. The plaintiffs were not seeking for khas possession, but merely for possession by receipt of rent from the defendants. Under these circumstances, even if the plaintiffs had sued for and obtained a decree for possession of the property, that possession could only have been delivered by notifying the declaration of the plaintiffs' title as prayed for. We think, therefore, that the omission to sue for possession was immaterial, and that the suit was not liable to be dismissed on this ground.

Under these circumstances we reverse the decree of the lower Appellate Court and remand the case to that Court under s. 562 of the Code for trial of the appeal on its merits.

J. V. W. *Appeal allowed and case remanded.*

(1) 4 C. L. R., 455.