APPELLATE CIVIL.

Before Sir Laurence H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Doss.

1910
Feb. 28.

SHELLEY BONNERJEE
v.
RAJ CHANDRA DATTA.*

Interpleader—Landlord and Tenant—Civil Procedure Code (XIV of 1882) ss. 470, 471, 474, 578—Bengal Tenancy Act (VIII of 1885) s 149.

An interpleader suit, with a prayer for declaration of the titles of the several sets of defendants in the disputed land, by the tenant against the landlords in whose favour he has executed separate *kabuliyats*, is not maintainable.

SECOND APPEAL on behalf of the defendants by the Receiver appointed by the High Court.

The plaintiff in the suit, out of which this appeal arose, was originally the *raiyat* of all the nine plots of land to which the suit related. The lands were situated in Jowar Abdullapur, within the revenue-paying estate Gangamandal. Defendant No. 1, Mr. Shelley Bonnerjee, was the receiver appointed by the High Court and placed in charge of the estate. Defendant No. 2, who was the owner of the estate to the extent of 4 annas, partly on his own account and partly as administrator to the estate of his deceased brother, was, at the time of the suit, the *ijaradar* of the *khas* lands of the estate under the receiver. Defendant No. 8 was then the *dar-ijaradar* of 2 annas of Jowar Abdullapur under defendant No. 2, and the lands in suit were claimed as appertaining to that share. Defendants Nos. 3 to 6 were the owners of an ancestral *taluk*, by name Ram Ganga, and of an ancestral *miras* tenure of the lands of the *lakheraj* estate within Jowar Abdullapur, known as Bholanath Bhattacharji. Defendant No. 7 was the owner of *miras* rights in plot No. 1 of the lands created in his favour

* Appeal from Appellate Decree, No. 2266 of 1907, against the decree of Ram Charan Mallik, Subordinate Judge of Comillah, dated July 15, 1907, affirming the decree of Mohendra Nath Das, Munsif of Comillah, dated Jan 31, 1906.

by the father of defendants Nos. 3 to 6, as owner of *taluk* Ram Ganga, towards the latter end of 1290. Madhab Aditya, who was the *dar-ijaradar* and *kat-ijaradar* of the *khas* lands of the estate within Jowar Abdullapur from 1270 to 1290, according to the plaintiff's case, realized rents from him during that period in respect of all the nine plots of land in suit. After the expiry of the term of his *dar-ijara*, he granted a *kaimi-miras* of plots Nos. 2 and 3 of the lands in suit to the plaintiff, describing the lands as appertaining to *taluk* Ram Ganga, and another *kaimi-miras* of plots Nos. 4 to 7, describing the latter as appertaining to the *lakheraj* estate Bholanath. From that time the plaintiff was paying rent in respect of plot No. 1 to defendant No. 7, and in respect of plots Nos. 4 to 7 to Madhab Aditya and his heirs (defendants Nos. 3 to 6) as owners of *taluk* Ram Ganga and of the *miras* tenure within the *lakheraj* estate Bholanath Bhattacharji. One Sani Mahomed, who was the *dar-ijaradar* of the *khas* lands of Gangamandal within Jowar Abdullapur from 1291, sued the plaintiff for rents in respect of plots Nos. 2 to 9, but his suit was dismissed so far as plots Nos. 2 to 7 were concerned, and was decreed in respect of plots Nos. 8 and 9 only. Subsequently, in 1299, the officers of defendant No. 2 took a *kabuliyat* from the plaintiff in respect of all the nine plots of lands. From that time the plaintiff had to pay rents in respect of the lands in suit to defendant No. 2 and the *dar-ijaradar* under him, and also to defendants Nos. 3 to 7. Under the circumstances, the plaintiff brought the suit and prayed that the title of the different sets of defendants might be declared, so as to relieve him of liability to pay rents twice over in respect of the lands in suit.

Defendants Nos. 1 and 2 contended, *inter alia*, that the suit was not maintainable in the form in which it was brought.

The Court of first instance dismissed the suit as not maintainable. On appeal, the finding on the question of the maintainability of the suit was set aside and the case remanded for trial on the merits. On remand, the learned Munsif held that the suit was not barred by limitation or *res judicata*, and declared which plots were comprised in what *taluk*. On appeal,

1910

SHELLEY BONNERJEE v. RAJ CHANDRA DATTA.

the learned Subordinate Judge upheld the findings of the Court below.

The defendants, thereupon, appealed to the High Court.

Babu Prabhashchandra Mitra (with him *Babu Umakali Mukherji*), for the appellant. The plaint in the present case contravenes the provisions of section 474 of the Civil Procedure Code. The elements of section 474 are all present. I also rely on section 471. *Koylash Chandra Dutt* v. *Goluk Chunder Poddar* (1) supports me.

Babu Umakali Mukherji, for the appellant [appeared at this stage and was allowed to follow]. The plaintiff was not prejudiced in any way. He could have taken advantage of section 149 of the Bengal Tenancy Act. It is true the point we are now seeking to raise was decided against us by the first appellate Court, and there was a remand. It is, however, a pure point of law and we can raise it now.

Babu Gobindachandra De Roy, for the respondent. Upon the facts found and admitted, a bill of interpleader is sustainable in law. Section 474 does not prohibit such a suit. The rule that a tenant cannot compel his landlord to interplead has an exception, as in section 474 itself. The present case falls within that exception: *Clarke* v. *Byne* (2).

There was no appeal by the appellant against the order of remand, and considering the turn the case has taken, he should not be allowed to raise the point now. The appellant must, moreover, show that there has been injustice in the case to have the interference of Court: *Mohesh Chandra Dass* v. *Jamiruddin Mollah* (3), *Mallikarjuna* v. *Pathaneni* (4), *Durga Kinkar Norha* v. *Konchai Ronza* (5), *Madhu Sudan Sen* v. *Kamini Kanta Sen* (6), *Baikuntha Nath Dey* v. *Nawab Salimulla Bahadur* (7), *Matra Mondal* v. *Hari Mohun Mullick* (8), *Nowcowree Mundul* v. *Mookta Bibee* (9). *Nussurooddeen Hossein Chowdhry*

(1) (1897) 2 C. W. N. 61.
(2) (1807) 13 Ves. 383.
(3) (1901) I. L. R. 28 Calc. 324.
(4) (1896) I. L. R. 19 Mad. 479.
(5) (1904) 5 C. L. J. 71.
(6) (1905) 9 C. W. N. 895.
(7) (1907) 12 C. W. N. 590.
(8) (1889) I. L. R. 17 Calc. 155.
(9) (1865) 2 W. R. 181.

v. *Lall Mahomed Puramanick* (1), and *Gunga Monee Dossee* v. *Issur Chunder Shaha* (2). Section 474 only lays down a rule of procedure. Even if there has been a defect or error in the frame of the suit or in the order of remand, section 578 of the Civil Procedure Code would cure it.

[JENKINS C.J. But if the suit itself be unsustainable, it would raise a question of jurisdiction.]

But no question of jurisdiction can arise if the Court had pecuniary and local jurisdiction, and also jurisdiction over the subject-matter : *Matra Mondal* v. *Hari Mohun Mullick* (3) and *Mohesh Chandra Dass* v. *Jamiruddin Mollah* (4). Moreover, the ground of unsustainability raised in this case is not of jurisdiction. The suit may, moreover, be treated as a suit for declaration as regards the *kabuliyats* and other matters. If defendants Nos. 3 to 6 were wrongly impleaded, they may be treated as unnecessary parties. A misjoinder of parties under such circumstances cannot defeat the suit : see section 99 of the new Code. As regards defendants Nos. 7 and 8, an interpleader suit is not improperly constituted, merely because one or two of the defendants do not claim the whole of the subject-matter. The case cited by the appellant is clearly distinguishable.

Babu Umakali Mukherji, in reply. Section 578 cannot have any application, as the question affects the merits of the case and in fact goes to the very root of it.

Cur. adv. vult.

JENKINS C.J. This case comes before us by way of second appeal, and it arises out of a suit which has the appearance of an interpleader proceeding. The plaintiff is the tenant of the lands to which the suit relates, and the defendants may be divided into two groups—on the one side being ranged defendants Nos. 1, 2 and 8, whom I will for brevity call the Shovabazar party, and on the other side defendants Nos. 3 to 7, whom I will describe for brevity as the Chaudhuri party. The plaintiff's grievance is that having, as he says, passed two

(1) (1870) 13 W. R. 234.
(2) (1872) 17 W. R. 465.
(3) (1889) I. L. R. 17 Calc. 155.
(4) (1901) I. L. R. 28 Calc. 324

1910

SHELLEY BONNERJEE v. RAJ CHANDRA DATTA.

JENKINS C.J.

kabuliyats, one in favour of the Shovabazar party and the other in favour of the Chaudhuri party, he finds himself in this predicament of being sued on both. This he considers gave him title to come to the Court, and he has brought this suit praying "that the Court may be pleased to declare which defendant has what right in which of the disputed lands, and in what right the plaintiff holds which of the said lands, under whom, and for what amount of rent the plaintiff is liable to which defendant, for which land, and to declare that one of the two parties claiming the rent of the said lands is not entitled to the same"—a somewhat comprehensive and complicated prayer for an interpleader. There are further prayers which may be regarded as the sequel of that which I have read. The Munsif, before whom the case came in the first instance, dismissed the suit as not being maintainable. His decree was reversed on appeal by the Subordinate Judge and a remand was directed. Unfortunately, the present appellants did not at that time prefer an appeal, and so the case went back to the Munsif. There was an investigation before him resulting in a decree, of which the defendant No. 1, as the mouthpiece of the Shovabazar party, complains. This decree was on appeal affirmed by the Subordinate Judge, and it is from that decree of affirmation that the present second appeal is preferred.

Two points only are raised on this appeal. *First*, it is said that the Courts below should have held that the suit was barred by the provisions of section 474 of the Civil Procedure Code of 1882, and should have dismissed the suit; *secondly*, that the Courts below should have held that the plaintiff's suit was barred by the principle of *res judicata*. The plaintiff endeavours to support the decree in his favour by reference to section 474 of the Civil Procedure Code, and he in effect concedes that unless he can establish to our satisfaction that this suit is sanctioned by section 474, Civil Procedure Code, it is misconceived. Section 474 is only one of several contained in Chapter XXXIII, which lays down the law as to interpleader. Section 470 provides that "when two or more persons claim adversely to one another the same payment or property from another person,

whose only interest therein is that of a mere stake-holder and who is ready to render it to the right owner, such stake-holder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself: Provided that, if any suit is pending in which the rights of all parties can properly be decided, the stake-holder shall not institute a suit of interpleader." Then section 471 lays down what are the requisites of a plaint in such a suit. It provides that the plaint must state "(*a*) that the plaintiff has no interest in the thing claimed otherwise than as a mere stake-holder; (*b*) the claims made by the defendants severally; and (*c*) that there is no collusion between the plaintiff and any of the defendants." Then it is provided in section 472 that "when the thing claimed is capable of being paid into Court or placed into the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit." The prayer of this suit seeks a declaration as to the title to land, and if this land is to be regarded as the property that was in dispute, I fail to see how the plaintiff can describe himself as a mere stake-holder of the property, and indeed in view of that obstacle in his way the learned pleader for the plaintiff has, in the course of his argument before us, urged that the interpleader relates to the rent payable under the *kabuliyat*. But there again we are confronted with the difficulty that there are two *kabuliyats* and not one *kabuliyat*, and the amount secured by each is different from that payable under the other, so that I fail to see how it can be said that we have the predicament of two or more persons claiming adversely to one another the same payment or money; and without elaborating the matter further, it appears to me that the case manifestly does not come within the positive provisions of Chapter XXXIII, and that section 474 is clear in its terms against the plaintiff. On the facts placed before us, it is impossible to hold that the rival parties, when their positions in relation to these claims are precisely defined, claim the one through the other. If the plaintiff finds himself harassed in

1910

SHELLEY BONNERJEE v. RAJ CHANDRA DATTA.

JENKINS C.J.

the way he describes, it may be that he can take advantage of the protective procedure prescribed by section 149 of the Bengal Tenancy Act, though as to this I can express no definite opinion on the present materials. But be this as it may, the suit which he has brought is not properly maintainable. It has been urged that, having regard to the provisions of section 578 of the Civil Procedure Code of 1882, no advantage can be taken against him of that fact, having regard to the course this case has taken. I cannot agree with that view of the section or of the case that the plaintiff has cited to us as the most potent in his favour, that is to say, the decision in *Mohesh Chandra Dass* v. *Jamiruddin Mollah* (1). There is nothing in that case, nor, in my opinion, is there anything in the section, which sanctions the view that the appellant has lost his right of appeal to the High Court after remand.

The result then is that, in my opinion, the appeal must be allowed and the suit must be dismissed.

The appellant will get his costs of this appeal and also the costs throughout other than those subsequent to the remand.

DOSS J. I agree.

Appeals allowed.

S. M.

(1) (1901) I. L. R. 28 Calc. 324.