(1880) 02 AHC CK 0017

Allahabad High Court

Case No: None

Durjan Kuar and Others and Piarey Lal and Others		APPELLANT
	Vs	
Naraini Kuar		RESPONDENT

Date of Decision: Feb. 2, 1880

Citation: (1880) ILR (All) 738

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Straight, J.

These are first appeals from two orders, passed by the Subordinate Judge of Bareilly on the 4th of July 1879. In order to make the question of law raised on behalf of the appellant intelligible it is necessary to recapitulate the following facts.

2. It appears that two suits are pending in the Court of the Subordinate Judge against one Naraini Kuar. In the first of these the plaintiffs are Rani Durjan Kuar, Chandi Din, and Mashuk Mahal Sahiba Begam, and in the second Piarey Lal, Bhairon Prasad, Shib Lal, and Narbada Prasad. The litigation relates to the ancestral property of Chaudhri Basant Ram, deceased. The three plaintiffs in case No. 1 sue for possession of the property by right of inheritance,--Rani Durjan Kuar as widow of Basant Ram and step-mother of Chaudhri Naubat Ram, his son, also deceased; Chandi Din as grandson of Basant Ram and sister''s son of Naubat Ram; and Mashuk Mahal Sahiba Begam as vendee of a portion of the property in suit from the other two plaintiffs, under a sale deed of the 17th of February 1879. In case No. 2 the four plaintiffs, alleging themselves to be the nearest heirs of the deceased Naubat Ram, sue for proprietary possession, by cancelment of an order of the 15th August 1879, declaring Naraini Kuar to be the owner of the property in suit and directing the entry of her name, in that character, in the khewat. To both suits the defendant

replies, that she is entitled to the property by" virtue of the adoption of her deceased husband, Raghunandan Prasad, by Naubat Ram. It is admitted that she is in possession, and that her name is entered in the revenue records. The two plaints were filed respectively, in the first case, on the 17th April, and, in the second, on the 12th May 1879. The pleas of the defendant were put in on the 4th of July. Upon that day application was made u/s 32 of Act X of 1877, by both sets of plaintiffs, praying that they might be added as defendants in that suit in which they were not plaintiffs, and thereupon the orders now appealed were passed.

3. It is objected before us on behalf of the original defendant, Naraini Kuar, that these orders are irregular and illegal; that the Subordinate Judge has misinterpreted the provisions of Section 32 of Act X; that he has improperly exercised the discretion vested in him under that section; and that it is inequitable that the defendant should be hampered and embarrassed in the conduct of her case, by being placed between a cross-fire of adverse claims, those of the plaintiffs on the one hand and of the defendants on the other.

4. The question thus raised is one of much importance, as to the procedure and practice contemplated by Section 32. The substantial point for determination appears to be, has the Subordinate Judge, having regard to the permissive character of Section 32, properly, that is, within the terms of the section, exercised his discretion in passing the two orders appealed.

5. No doubt it is most desirable, when litigation has been instituted in respect of a particular subject-matter or specific contract, that the Court having cognizance of it should see that all questions directly springing out of it should be raised and dealt with once and for all, and that all persons naturally concerned in and likely to be legally affected by the determination of those questions'' should be joined as parties. The practice of the English Equity Courts has always been to recognise this principle in its widest aspect, and the Orders under Rule XVI of the Judicature Act afford abundant facilities for the joinder of parties. It is noticeable that their language, with slight exception, is repeated word for word in the earlier sections of the 3rd chapter of the Civil Procedure Code, though it is worthy of observation that the provisions of Orders 17 and 19, as to adding persons from whom a defendant claims contribution or indemnity, or others whom the Court or Judge thinks should be joined for the purpose of a question being determined, not only as between the plaintiff and defendant, but between them and such other person, have not been incorporated. While the propriety of preventing unnecessary and expensive repetition of litigation and multiplication of suits cannot be questioned, neither as a principle of justice to litigants nor as a convenient rule of practice can an indiscriminate joinder either of causes of action or of parties be tolerated.

6. It becomes necessary to closely examine not only the terms of Section 32, but also the kindred provisions in the earlier part of chapter III, which now replace the legislation formerly contained in Section 73 of Act VIII of 1859. First as to Section 32,

the Court may at any time, either upon or without application "order that any plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suits, be added." But it seems to me that, in exercising the very wide discretion given by these later words, regard should be had to the terms of Sections 28 and 29, and the test as to the joinder of defendants should be whether the relief sought is "in respect of the same matter," or the liability alleged to exist relates to "any one contract."

7. Now let us see how the language of these sections is applicable to the cases under consideration. So far as the two sets of plaintiffs are concerned, it is obvious that their claims are altogether adverse, and that, as between them, there is a question of priority of heirship to be decided, in which Naraini Kuar, the original defendant, has no actual interest. It is true that the property to which they both assert a title is one and the same, but I do not think that this circumstance justifies the orders of the Subordinate Judge. Apart from all questions of inconvenience or embarassment to the principal defendant in the conduct of her defence, should she fail to establish the adoption on which the whole fabric of her case rests, I do not see how, as between the plaintiffs and the joined defendants, no matter in which case, any decision that can be passed will estop either of them from subsequent assertion of their rights against one another in a separate suit. It does not appear to me that the plaintiffs in either case could have joined the other plaintiffs in their original plaint as defendants, for they sought no relief against them, and the relief they did seek against Naraini Kuar was not in the sense of Section 28 in respect of "the same matter." The joinder of the two sets of plaintiffs, as defendants, in accordance with the order of the Subordinate Judge, can only be reasonable, if they are to be equally bound by the decree in one suit, not only as to the principal defendant, but as between themselves; and it is only in this sense that " their presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." But the question involved in each suit is not what are the rights of the two sets of plaintiffs inter se; the issue to be decided between the defendant Naraini Kuar and each set of plaintiffs is perfectly plain and intelligible, and, as she is in possession, the burden of proof will be on those who assail her title. Necessarily all the plaintiffs are interested in the determination of the "adoption," set up by the principal defendant, but, as I have already remarked, I do not see how a finding upon this point in either suit can bind the joined defendants to the plaintiffs or the plaintiffs to the joined defendants, in respect of their mutual claims between one another to the property, or, in the event of the principal defendant establishing the adoption in one case can obviate a second trial. No plea of res judicata could be sustained. Upon the argument before us, Mr. Hill for the appellant called our attention to three lengthy

judgments of Sir Barnes Peacock--Joy Gobind Doss v. Gouree Prashad Shaha 7 W.R. 202; Raja Ram Tewary v. Luchman Pershad 8 W.R. 15; Ahmed Hosain v. Khoaeja 10 W.R. 368 : 3 B.L.R.28 which are valuable and instructive. For, though these were given upon cases arising u/s 73 of Act VIII of 1859, the reasoning and principles of interpretation enunciated may appropriately be followed in construing Section 32, Act X of 1877. u/s 73, Act VIII of 1859, the Court had power to join "all parties who may be likely to be affected by the result," an expression that might be taken to mean a great deal more than was ever intended by the legislative authorities, and which Sir BARNES Peacock in the judgments already adverted to was careful to qualify and reduce within intelligible limits. But now reading, as I think one should, Sections 28, 29 and 32 of Act X together, the terms "questions involved in the suit " must be taken to mean questions directly arising out of and incident to the original cause of action, in which, either in character of plaintiff or defendant, the person to be joined has an identity or community of interest with that party in the litigation on whose side he is to be ranged. I do not lay this down as an irrefragable rule by which applications u/s 32 of Act X should be determined; for cases may arise similar to Saroda Pershad Mitter v. Kylash Chunder Banerjee 7 W.R. 315, and Kali Prasad Singh v. Jainarayan Roy 3 B. L.R. 23; but in the multitude of instances it will be a useful test to apply in deciding whether the presence of parties is necessary to enable the Court "effectually and completely to adjudicate and settle the questions involved in the suit." I entirely agree with the remarks of Pontifex, J., in Mahomed Badsha v. Nicol ILR Cal. 355, and applying them in the present cases, it appears to me that the joinder of the two sets of plaintiffs as defendants was not necessary to enable the Court effectually and completely to settle the question arising between the plaintiffs and Naraini Kuar in the respective suits. I, therefore, think that the Subordinate Judge improperly passed the two orders of the 4th of July, and that these appeals must be allowed with costs. The defendants who have been added to the record will be struck off, their statements of defence returned to them, and the plaints restored to their original shape.