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**(1886) 04 CAL CK 0001**

**Calcutta High Court**

**Case No:** None

Loke Nath Surma and Others

APPELLANT

Vs

Keshab Ram Doss and Others

RESPONDENT

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**Date of Decision:** April 19, 1886

**Acts Referred:**

- Specific Relief Act, 1877 - Section 42

**Citation:** (1886) ILR (Cal) 147

**Hon'ble Judges:** McDonell, J; Beverley, J

**Bench:** Division Bench

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### **Judgement**

McDonell and Beverley, JJ.

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

2. 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 u/s 42 of the Specific Belief Act.

3. 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. Mdhgal Dabi ILR All. 163 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.

4. 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 19

W.R. 203 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.

5. 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.

6. 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.

7. 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.

8. 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:

9. "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.

10. 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.

11. 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 Section 31 of the Code provides 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."

12. By Section 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.

13. 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* 4 C.L.R. 455.

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

15. 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.

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