

Kamala Prosad Gupta Vs Chaman Lal Agarwalla and Others

Court: Calcutta High Court

Date of Decision: Dec. 4, 1961

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 1 Rule 3, Order 1 Rule 5

Citation: 66 CWN 391

Hon'ble Judges: P.N. Mookerjee, J; Laik, J

Bench: Division Bench

Advocate: Jitendra Nath Guha and Susil Kumar Biswas, for the Appellant; Baidyanath Sarkar and Nani Bose, for the Respondent

Judgement

P.N. Mookerjee, J.

This Rule arises out of a suit for recovery of possession of the disputed property from the defendants after a

declaration of the plaintiff's tenancy right therein under defendants nos. 3 and 4, a declaration of determination of the defendant no. 1's tenancy

under the plaintiff and a further declaration that defendant no. 2 is a trespasser. An objection was taken to the maintainability of the suit on the

ground that it was bad for multifariousness. This defence has been accepted by the learned trial Judge and the plaintiff has been directed to make

his election whether he will proceed against the defendant no. 1 for ejectment and arrears of rent and damages or against the trespasser defendant

no. 2 and the superior landlords defendants nos. 3 and 4 for the several reliefs, claimed against them.

2. In the plaint, there was a specific allegation of conspiracy amongst all the defendants for keeping the plaintiff out of possession of the disputed

property, but the learned trial Judge has held that this mere allegation of conspiracy would not be sufficient for a lawful joinder of the several causes

of action against the several defendants and that, accordingly, it would be no answer to the defence objection of multifariousness. It is against this

order that the present Rule has been obtained by the plaintiff.

3. It seems to us that the impugned order cannot be supported. The allegation of conspiracy in the plaint, as it stands, would be sufficient for uniting

or joining the several causes of action against the several persons concerned under Order 1, rule 3 of the Code of Civil Procedure. This provision

has been liberally interpreted by courts and its scope has never been attempted to be narrowed down or restricted. The point was elaborately

discussed in the leading case of Ramendra Nath Roy v. Brajendra Nath Dass (1) (1917) 21 C.W.N. 794: ILR 45 Cal. 111. The same view has

been affirmed in the more recent case of Shew Narayan Singh Vs. Brahmanand Singh and Others, . There will also be found a series of decisions,

adopting or supporting the above liberal construction of the statute. Moreover, at the present stage, we are concerned only with the pleadings or,

rather, the plaint, for our present purpose, and, in view of the allegation of conspiracy, made therein, the present suit should be held maintainable

and not bad for multifariousness Apart from that, looking into the matter at its root and as a point of principle, there can be no legitimate objection

to the joinder or union of the several causes of action, as made in the plaint of the instant suit. On the plaintiff's case his claim for khas possession

of the property, either against the tenant (defendant no. 1), or against the trespasser (defendant no. 2), or against the superior landlords

(defendants nos. 3 and 4), cannot arise, unless he can prove his own tenancy right under the said superior landlords and can prove, further, a

determination of defendant no. 1's tenancy under him. All these claims will thus be sufficiently inter-connected and the necessary nexus, required

for purposes of Order 1, rule 3 of the Code under the uniform judicial decisions (including Anukul Chandra Chakravarty v. Province of Bengal and

others (3) 51 C.W.N. 295) would be well established. Indeed, the foundation of the case on which the rest depends or the foundation of the

plaintiffs' suit in substance and concisely speaking, is the determination of defendant no. 1's tenancy under him and that, in particular, is the act, out

of which his claim or right to relief arises (Vide (1) ILR 45 Cal. 111 supra at p. 124) and the mere fact that other acts or transactions may also be

relevant or necessary would not be material and would not affect the position for purposes of Order 1, rule 3 of the Code (Vide ILR 45 Cal. 111

at p. 135). Moreover, even looking at the matter more elaborately and comprehensively the suit is founded on the plaintiff's tenancy right under

defendants nos. 3 and 4 (entitling him to possession), the determination of defendant no. 1's tenancy under him [entitling him (plaintiff) to khas

possession] and his (plaintiff's) dispossession by the defendants or, to be more precise, by defendant No. 2, rendered possible by reason of

default on the part of defendant no. 1 to deliver back possession to the plaintiff on termination of his (defendant no. 1's) tenancy. The links in the

above transactions are thus obvious and they are sufficient to make them one series of transactions, and the said transactions are thus sufficiently

connected to constitute one series of transactions - (under Order 1, rule 3 of the Code), out of which the plaintiff's right to relief arises

4. There can be no question also that, if two separate suits were brought for khas possession as against defendant no. 1 and against the other

defendants, at least two common questions of fact and law would arise, namely, that the plaintiff has a subsisting tenancy right under defendants

nos. 3 and 4 and that, further, he has determined the defendant no. 1's tenancy under him.

5. In the above view, on a consideration of the basic principles, underlying the rule of joinder of parties and causes of action, the present action as

one unit should be held to be maintainable.

6. It is true that, in the plaint, there are also other claims, namely, of arrears of rent and mesne profits as against defendant no. 1, the latter for the

period after the determination of his (defendant No. 1's) tenancy and damages or mesne profits as against defendant no. 2, but these are only

incidental or consequential reliefs flowing from or arising out of the main relief of recovery of khas possession,- more elaborately, - of declaration

of the plaintiff's tenancy right under defendants nos. 3 and 4, determination of defendant no. 1's tenancy under him and establishment of the

plaintiff's claim for khas possession against the defendants and defendant no. 2, in particular, as trespasser It is perfectly clear that such incidental

or ancillary or consequential reliefs can always be included in suit for the main relief.

7. It is to be remembered also that the statute expressly permits joinder of defendants and causes of action not only where the right to relief against

the several defendants exists jointly but also severally or, in the alternative (vide Order 1, rule 3 of the Code) and does not require that all the

defendants should be interested in all the reliefs (vide Order 1, rule 5 of the Code).

8. In the above view, we hold that the learned trial Judge was in error in accepting the defence objection of multifariousness in the instant suit and in

directing the plaintiff to make his election as aforesaid.

9. We would, accordingly, answer the point in favour of the plaintiff, make this Rule absolute, set aside the order of the learned trial Judge and

direct that he do proceed with the instant suit in accordance with law in the light of the observations, made hereinbefore. There will be no order for

costs in this Rule.

Laik, J.

I agree.