
(1872) 07 CAL CK 0003

Calcutta High Court

Case No: Regular Appeal No. 277 of 1871

Imrit Nath Jha

APPELLANT

Vs

Roy Dhunpat Sing
Bahadur and Others

RESPONDENT

Date of Decision: July 22, 1872

Final Decision: Dismissed

Judgement

Sir Richard Couch, Kt., C.J.

The plaintiff in this case held five talook under five patni pattas from the same Zamindar, and it appears from the admission of the plaintiff's pleader, the correct-nose of which is not disputed, that these were separately sold for arrears of rent due separately upon each. The plaintiff now dues to set aside the sales, and to be restored to the pos-session of the property. Now, as regards the Zamindar defendant, there were five separate causes of action respect of each talooks. Although one or more than one might have been properly sold, it by no means followed that all were. If it were not necessary to join other persons in the suit, it would he a case in which the CPC would have allowed one suit to be brought because separate causes of action by and against the same parties may be joined in the same suit, subject to the entire claim being within the jurisdiction of the Court, but here it was necessary to join the other defendants who were purchasers of different talooks. With regard to them the causes of action, and the plaintiff's right to recover possession of the property, were separate. Here we have against the defendants the purchaser"s separate suits upon separate caused of action put into one suit, and the decisions of this Court are clear that this is not proper, Sir Barnes Peacock, in the Full Bench case of Raja Ram Tewary v. Luchmun Pershad 8 W.R.,15 gives reasons, in which I concur, why it should not be allowed and he says that, when a plaint of this nature is presented, it ought to be rejected. Here the plaint was not rejected. The defendants were not present at that stage of the suit, and could not take the objection. The plaint having been received, all the defendants at the earliest possible time, including the zamindar, objected that they ought not to be joined in one suit. The objection being taken, the Judge properly framed on issue upon it. He not only framed that issue, but other issues upon the

questions of fact involved in the suit. I am not prepared to say that this was an erroneous course. The Judge might have felt doubtful whether his decision on the point of multifariousness if appealed against would stand, and if it did not, the case would be remanded to be tried on its merits. Probably he thought the better course was to take the evidence bearing upon the different issues, and then to give his judgment. Having done this, he decided, as he might have done in the first instance, that the suit ought to be dismissed upon the objection of misjoinder. It was contended by the learned Advocate-General that the Judge, having taken the evidence, ought not to have dismissed the suit upon that objection; that apparently no mischief had been done by joining the parties in one suit; and that the present respondent should not be allowed to retain the decision which has been given in his favor. I think this argument cannot have effect. The respondents had no power to compel the Judge to try singly the issue whether there was a misjoinder of claims. If he thought it proper to take evidence upon all the issues, the respondents could not prevent it. It is said that they could have come to this Court but this Court certainly would not in the exercise of its supervising power, interfere in that stage of the proceedings. The defendants took the objection at the proper time, and the judgment which the Judge gave, after hearing the evidence, must be considered as if it was given at the proper time, and as if he had rejected the plaint on its being first presented to him when a plaint which ought to be rejected is received by the Court and it is afterwards found that the plaint ought to have been rejected, the proper course is to dismiss the suit, as has been done here. Then, as regards any costs which the plaintiff may have been put to by the taking of the evidence, it seems that, after the objection of misjoinder had been taken by the defendants, and an issue raised upon it, the pleader for the plaintiff deliberately insisted on his right to proceed in this suit against all the separate purchasers.

2. We dismiss the appeal, and confirm the judgment of the lower Court with costs. Our judgment will not prejudice the right of the plaintiff to bring his suit in the proper form.

¹ See Commissioners of Sewers of the City of London V. Glasse L.B. 7 Ch., 456