

(1881) 03 CAL CK 0016

Calcutta High Court

Case No: None

Uma Sundari Dasi

APPELLANT

Vs

Ramjihaldar and
Others

RESPONDENT

Date of Decision: March 7, 1881

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 34

Citation: (1881) ILR (Cal) 242

Hon'ble Judges: Richard Garth, C.J; McDonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that the Court below was not justified in dismissing the plaintiff's suit.

2. The Munsif was undoubtedly wrong in rejecting the claim, because one of the parties who had been made a plaintiff was of infirm mind. The man had not been adjudicated a lunatic; and had not therefore lost his civil rights, and there was no reason why he should not have appeared either by vakeel or in person; see 2 Wm. Saund, Rock v. Slade (7 Dowl. 22), and Gleddon v. Trebble (9 C.B.,N.S., 367). In this respect the District Judge was quite correct.

3. But the great mistake which was made by the Munsif was this.

4. One out of several co-sharers brought the suit, asking to have his co-sharers joined as plaintiffs. No objection upon the ground of the non-joinder of these co-sharers appears to have been taken by the defendants; and therefore, if the plaintiff herself had not suggested the difficulty, the suit might have proceeded in the name of one plaintiff, and she might have recovered the whole rent.

5. Section 34 of the CPC says, that" all objections for want of parties or for joinder of parties who have an interest in the suit, should be taken at the earliest possible

opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant."

6. The reason why the defendant in a case of this kind is entitled to have all the co-sharers made plaintiffs upon the record is this, that he contracted to pay his rent to them all jointly. They are all entitled to the rent, and he has a right to look to all and each of them for his costs, in case he should be successful in any suit which they may bring against him. But he must make his objection in proper time; and if he does not do so, the plaintiff who sues may recover the whole rent.

7. In this case, although no objection was taken by the defendants, the Munsif, at the plaintiff's suggestion, thought it right to add the names of all the co-sharers as plaintiffs, although they did not consent to being so joined.

8. It is clear that, by the terms of s, 32, he had no right to do this. No person is obliged to have his or her name added as plaintiff in a suit without his or her consent. And the justice of this rule is obvious, because the suit may be improperly brought; and if a party were made plaintiff without his consent, he might also be made liable for costs.

9. If the defendants object that other parties should be joined as plaintiffs, and they refuse to be joined, the proper course is to make them defendants, so that they are all before the Court and the Court may make what order it considers just as to costs.

10. The principal mistake, therefore, which has been made in this case is, that the Munsif has joined the co-sharers as plaintiffs instead of defendants; and what the District Judge ought to have done, was to send the case back to the Munsif, in order that this mistake should be rectified by amendment, and that the suit should then be tried upon its merits.

11. We consider that we are bound to do now what the District Judge ought to have done; that is, to send the case back to the first Court, with directions that the persons who were made plaintiffs against their will should be made defendants, and that the case should be tried upon its merits. We think that the costs in all the Courts should abide the result.