

Tarapada Mondal Vs Mriganayani Devi**Civil Rule No. 2821 of 1953**

Court: Calcutta High Court**Date of Decision:** June 22, 1954**Acts Referred:**

Civil Procedure Code, 1908 (CPC) – Order 1 Rule 3, Order 2 Rule 6, 28

Citation: (1955) 1 CALLT 1 : 59 CWN 53 : (1956) 1 ILR (Cal) 324**Hon'ble Judges:** Debabrata Mookherjee, J; Das Gupta, J**Bench:** Division Bench**Advocate:** Lala Hemanta Kumar, for the Appellant; Panchanan Choudhury and Nirmal Chandra Choudhury, for the Respondent

Judgement

Das Gupta, J.

The opposite party No. 1 instituted a suit for declaration of her title to and for delivery of Johns possession on ejectment of

the Defendants from several plots of land on the averment that she had become entitled to the property as the reversioner to the estate of her father

Surendra Nath Mondal and that whatever interest the different Defendants had in the several plots on the strength of purchase at sales by private

treaty or in court sales in execution of decrees when the property was in the possession of her mother is no longer subsisting after the death of her

mother on January 14, 1952. There were altogether five sales by private treaty and three sales in execution of decrees of court. They were set out

in the plaint as the basis on which the Defendants claimed their interest.

2. On an objection being raised on behalf of the Defendants that the suit was not maintainable as framed on the ground that there had been

misjoinder of causes of action, the learned Subordinate Judge decided that one suit was maintainable as regards the lands covered by the five

deeds of sale by private treaty and that a separate suit was maintainable as regards the lands covered by the three sales in execution of decrees. In

this view he called upon the Plaintiff to proceed either in respect of the lands of the five kabalas or in respect of the lands of the three sale

certificates. The Plaintiff made her election to proceed in respect of the lands covered by the five kabalas. The Petitioners contend that the learned

Subordinate Judge was wrong in his decision that one suit is maintainable in respect of the lands of the five kabalas and have asked us to set aside

that order in the exercise of our powers of revision.

3. The learned Subordinate Judge has said that one single suit was maintainable in respect of the lands of the kabalas under Order I, Rule 3 of the

CPC and also Order II, Rule 3 of the Code of Civil Procedure. Whether or not one suit is maintainable as against the different Defendants in

possession of entirely distinct and separate plots of lands without any connection between themselves under Order II, Rule 3 of the CPC depends

on the question whether the suit in so far as these lands were concerned can be said to be based on one cause of action. Even, however, if they are

not the same cause of action one suit will be maintainable provided the case comes within the provision of Order I, Rule 3 of the Code of Civil

Procedure.

4. It is contended before us on behalf of the Petitioners that the question the court will have to decide as regards the plots of lands covered by each

separate kabala would be whether the sale in respect of that particular kabala was justified by legal necessity and consequently the cause of action

as regards the land of each kabala was separate and distinct. The question is not free from difficulty though it may be mentioned that there are two

decisions of this Court, viz., the cases of Ishan Chandra Hazra v. Rameswar Mondal ILR (1897) Cal. 831, and Nundo Kumar Nasker v.

Bonomali Gayan ILR (1902) . Cal. 871, which would seem to support the view that there is one single cause of action.

5. I do not, however, consider it necessary for the purpose of the present case to go into the question whether there is one cause of action or there

are separate causes of action as regards the five kabalas, because of my conclusion, for the reasons to be presently mentioned, that the case

clearly comes within the provisions of Order I, Rule 3 of the Code of Civil Procedure.

6. Order I, Rule 3 is in these words-

All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts

or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons, any

common question of law" or fact would arise.

7. It is clear that before the provisions of this rule are attracted it must be found that the right to relief as against the different Defendants is alleged

to arise out of the same acts or transactions or the same series of acts or transactions and further that if separate suits had been brought against

such persons any common question of law or fact would arise. Mr. Hemanta Kumar has contended that as of the five kabalas one was executed

as early as 1333 B.S. while the other kabalas were executed in 1339, 1340, 1341 and 1341 (?) respectively it will not be proper to consider them

as arising out of the same series of acts. I agree that it might be difficult to consider these different sales as made in the course of the same

transaction but I do not see any reason why they should not be considered, on the allegations made as constituting a single series of acts. Acts by

one person, viz., the limited owner, of alienating different portions of the property to different persons over a number of years should, in my

opinion, be properly considered as constituting one single series of acts. The acts are no doubt different, but that does not stand in the way of their

forming parts of one series. I am unable to agree with Mr. Lala Hemanta Kumar that as they are separated by the lapse of several years, they

belong to two or more different series of acts. My conclusion, therefore, is that according to the allegations in the plaint the reliefs claimed against

the several Defendants arise out of one single series of acts by the limited owner, the Plaintiff's mother. That all of them raised at least two common

questions of fact cannot be doubted for a moment, for, in all of these cases if they had been separately brought, the Plaintiff would have to prove in

the first place that she was a reversionary heir of her father Surendra Nath Mondal and that her mother who inherited on her father's death and

was holding the property as a limited owner had died. As was held in the case of Ramendra Nath Roy v. Brojendra Nath Dass ILR (1017) Cal. 3,

it is not necessary that all the questions should be common. If there is one single common question of law or fact that is sufficient to attract the

provisions of Order I, Rule 3 of the CPC provided the right to relief is alleged to arise out of the same acts or same series of acts or transactions.

8. The question whether different alienations to different parties spread over a number of years could be considered to constitute one series of acts

came up for consideration before a Full Bench of the Madras High Court in the case of C.S. Govindaraja Mudaliar v. Alagappa Thambiran ILR

(1926) Mad. 836. The learned Judges were unanimously of opinion that the different sales by the same trustee on different dates in regard to

different properties constituted one series of acts. For the reasons I have already mentioned I am in respectful agreement with this view of the

matter.

9. It is interesting to mention that in a case under the old CPC the question whether where the reversioners claimed a declaration that certain

alienations, four in number, of portions of an estate made by the limited owners were not binding on the reversioners the suit was bad for

misjoinder of the causes of action came up before the Privy Council in the case of (1909) L.R. 36 I.A. 103 (Privy Council) . From the statement of

facts in the report in this case, it appears that the kabalas were spread over a long term of years, viz., from 1886 to 1895. Their Lordships were of

opinion that even if there were any such misjoinder Section 578 of the old Code had the effect of preventing such a defect from being made the

ground of appeal. Consequently, their Lordships did not consider it necessary to decide the matter but they indicated very clearly their view that

there was grave doubt about the correctness of the contention that the suit was bad for misjoinder of causes of action, when they said,

Their Lordships think that it is at least very doubtful whether upon the strictest construction to be placed upon the CPC it could properly be said

that there was any misjoinder in this case.

10. As I have already mentioned, this decision was under the old Code of Civil Procedure, Section 28 of which corresponded to Order I, Rule 3

of the present CPC and was in slightly different words.

11. For the reasons I have already mentioned, I am of opinion that the learned Subordinate Judge is correct in his conclusion that one suit is

maintainable by the Plaintiff in respect of the lands covered by all the five kabalas.

12. I would, therefore, discharge the Rule. It would be for the learned Subordinate Judge to consider if he thinks it necessary whether separate

trials would be ordered under the provisions of Order II, Rule 6 of the Code of Civil Procedure.

13. The Rule is accordingly discharged with costs.

Debabrata Mookerjee, J.

14. I agree.