59 Ind. Cas. 517

Calcutta High Court

Case No: None

Manmatha Nath Bose and Others		APPELLANT
	Vs	
Jagat Ram Roy and Others		RESPONDENT

Date of Decision: July 8, 1919

Citation: 59 Ind. Cas. 517

Hon'ble Judges: N.R. Chatterjea, J; Duval, J

Bench: Division Bench

Judgement

1. The question involved in this appeal is, whether the suit is barred under Order II, Rule 2, of the Civil Procedure Code.

2. The suit was for recovery of possession of the lands in dispute on the allegation that the plaintiff had been dispossessed by the defendants.

3. The plaintiff"s case was, that the land originally belonged to one Ganga Das, Roy, that on the death of the latter the property devolved on his cons, on their death again their mother, Mukta Keshi, obtained it by inheritance, and that the plaintiffs, as the nearest agnates of Ganga Das, had succeeded to the property on the death of Mukta Keshi, they being the reversionary heirs. It is alleged that the plaintiffs succeeded to the property on the death of Mukta Keshi in 1913, and were in possession of it until dispossessed by the defendants on the 17th April 1915.

4. A previous suit was instituted by the plaintiffs on the 17th May 1915 against the defendants for establishment of their right to some other property which the defendants claimed to hold under a deed of gift executed by Mukta Keshi describing it as her stridhan property. It is contended on behalf of the appellant that the claim in the present case ought to have bean included in the previous suit inasmuch as the title upon which the previous, as well as the present, suit, were instituted, was the same, namely, that the

plaintiff was the reversionary heir of Gunga Das; and secondly, that the cause of action for the present suit, which is said to have arisen on the 17th April: 915, arose before the date of the previous suit instituted on the 17th May 1915.

5. Now, Order II, Rule 2, pays: "Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court;" and Sub Section (2) of the section lays down; "Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished."

6. The question, therefore, is whether the present claim was in respect of the same cause of action on which the previous suit was instituted.

7. The mere fact that the title to the property in claim in both the suits is the same, and that the property is the same, does not necessarily show that the cause of action is the same. In the case of Rajah of Pittapur v. Surya Row 12 I.A. 116 : 8 M. 520 (P.C.) : 9 Ind. Jur. 274 : 4 Sar. P.C.J. 638 : 3 Ind Dec. (N.S.) 356 the plaintiff sued to recover immoveabla property in consequence of having been improperly turned out of possession, and afterwards sued to recover from the same defendant move-able property in consequence of its wrongful detention, and it was held that the causes of action were distinct. In that case, although the right to the Immovable as well as to the moveable properties was based upon the same Will, it was held that the causes of action were separate. Their Lordships observed, with reference to Section 7 of Act VIII of 1859: "That section does not say that every suit shall include every cause of action, or every claim which the party has, but, every suit shall include the whole of the claim arising out of the cause of action--meaning the cause of action for which the suit is brought. The claim in respect of the personality was not a claim arising out of the cause of action which existed in consequence of the Defendants having improperly turned the plaintiffs out of possession of viravarum. It was a distinct cause of action altogether, and did not arise at all out of the other. It is not like the case of one conversion of several things. There the act of conversion of the several things is one cause of action, and you cannot bring an action for the conversion of one of the things, and a separate action for the conversion of another. The conversion of the whole is one claim and one cause of action." See also the case of Arnanat Bibi v. Imdad Husain 16 I.A. 105 : 15 C. 800 : 5 Sar. P.C.J. 214 : 12 Ind. Jur. 265 : 5 Sar. P.C.J. 214; Rafique and Jackson"s P.C. No. 103 : 7 Ind. Dec. (N.S.) 1117 and the resent case of Saminathan Chetty v. Palaniappa Chetty 26 Ind. Cas. 223: 41 I.A. 142 : 18 C.W.N. 617 : 17 New Law Reports 56 : (1914) A.C. 618 : 110 L.T. 913 : 83 L.J.P.C. 131 (P.C.). In the last case, after referring to Section 34 of the Ceylon Civil Procedure Code, which corresponds to Order II, Rule 2 of the Indian Code of Civil Procedure, Lord Moulton observed: It is directed to securing the exhaustion of the relief in respect of a cause of action, and not to the inclusion in one and the same action of different causes of action, even though they arise from the same transactions. The first part of the clause makes it incumbent on the plaintiff to include the whole of his claim in

his action. The second portion makes it incumbent on him to ask for the whole of his remedies."

8. On behalf of the appellant stress was laid on the fact that the cause of action for the present suit arose on the 17th April 1915 and that, therefore, this claim ought to have been included in the previous suit.

9. But that was a suit which was instituted for establishment of right to certain property as being the "property of the sons of Gunga Das and for a declaration that the deed of gift set up by the defendant was a collusive transaction and did not affect the right of the plaintiff. It was a suit, there fore, by the reversionary heirs for declaration of their right and for possession after setting aside the deed of gift. The cause of action in that suit arose on the day of Mukta Keshi"s death, which occurred in Baisak 1319, corresponding to April 1915. In the present suit, on the other hand, the plaintiffs alleged that they were in possession for three years after the death of Mnkhta Kesbi and had been dispossessed by the defendant. The cause of action in the present case was that the plaintiff, as the reversionary heirs of Mukta Keshi, succeeded to the estate and were in actual possession for three years after her death, and that they were dispossessed on the 17th April 1915. The causes of action, therefore, were distinct and the mere fact that the cause of action for the present suit arose before the date of the institution of the previous suit, did not make it obligatory on the plaintiff to include the claim in the previous suit The Judicial Committee pointed out that all the causes of action are not to be joined in the same suit but the whole claim arising out of the same case of action--meaning the cause of action for which the suit is brought.

10. We have been referred, on behalf of the appellant, to the recent case of Khardah Company Limited v. Durga Chiran Chandra 58 Ind. Cas. 633 : 43 C. 640. In that case the suit to recover possession of certain Immovable property was held to have been barred by the provisions of Order II, Rule 2 of the CPC by reason of the plaintiff not having claimed the property in a previous suit which the plaintiff instituted for recovery of damages in respect of the demolition of a building on the land. The learned Judges (Chitty and Panton, JJ.) -held the causes of action to be the same in the two suits on the ground that dispossession took place before the institution of the previous suit for damages. It appears that in that case the demolition of the building took place at the same time when the defendant dispossessed the plaintiff from the land, and in fact the dispossession was effected by the demolition of the building itself. That being so, the claim for damages and the claim for possession might be considered as having arisen out of the same cause of action. We think, therefore, that that case is distinguishable from the present one. In any case, we must follow the decisions of the Privy Council cited above.

11. We are of opinion that the order of remind made by the Court below is right. The appeal is accordingly dismissed with costs.