(1869) 04 CAL CK 0032

Calcutta High Court

Case No: Regular Appeal No. 250 of 1868

Rani Saratsundari Debi and Another		APPELLANT
	Vs	
Surja Kant Acharji Chowdhry and Others		RESPONDENT

Date of Decision: April 28, 1869

Judgement

Hobhouse, J.

The plaint in this case was against a number of defendants. Against some of those defendants the plaintiffs alleged that their cause of action accrued in the year 1266 in regard to certain lands, of which those defendants prevented them from taking possession; and as regards one other defendant, the cause of action was said to have accrued in the year 1270 when that defendant alone ousted the plaintiffs, from certain lands, different from those, in the matter of which the cause of action accrued in the year 1266. Upon this state of facts the lower Court dismissed the plaintiffs" suit with these remarks:-- "When the dates of ouster are different and the plaintiffs sue on the allegation that they were dispossessed by different defendants, and when it is clear that the interests of the answering defendants are distinct and separate, these statements involve different causes of action, the merits of which will have to be tried on different evidence. I think, therefore, that a suit of this nature cannot be maintained under the provision of section 8 of the Civil Procedure Code. The above section allows causes of action to be joined in the same suit by and against the same parties; but when the ousters in this case appeared to have occurred on different dates, caused by different defendants on different rights, they cannot be made the subject of one and the same suit." And so the Judge dismissed the plaintiffs" case.

2. In the grounds of Regular Appeal, the first three grounds are to the effect that the Judge is wrong in his law, and that even, on the facts stated by the Judge, the case should have been tried and determined. These grounds are substantially abandoned before us, and the only ground taken is the 5th ground, and of that again only a portion of the ground, and it is that in which it is stated that the Judge should have proceeded to try

the case in the manner laid down in section 9, Act VIII of 1859, that is to say, the Judge should have ordered separate trials to be held on one of the two different causes of action. The Judge himself relies in his decision upon certain precedents of this Court: Raja Ram Tewary v. Luchmun Persaud (8 W.R., 15); Baboo Motee Lal v. Rani, the wife of Maharaja Bhoop Sing Bahadoor (8 W.R., 64); Romoona v. Manicko Moyee Chowdhrain (9 W.R., 525). No doubt, these cases are not exactly in point, and in two of those cases the remarks made by the presiding Judges were what are called obiter remarks; but still the opinions there expressed go to the extent that it is not proper, when two causes of action against different persons are sought to be joined in the same suit, that the suit should be entertained and heard.

3. On the other hand, the pleader for the appellant relies on certain cases: Najoomoodeen Ahmed v. Beebee Zohoorun (10 W.R., 45); Golam Mustufakhan v. Sheo Soondaree Burmonee (10 W.R., 187); Hurro Monee Dossee v. Onookool Chunder Mookerjee (8 W.R., 461). But these cases are not exactly in point neither do they go as far as the appellants'' pleader would ask us to go in his case. They seem to us simply to say that when in the Court of first instance the evidence was entirely gone into, upon whatever might have been the causes of action, that even if those causes of action were different, the Judge should have determined the case upon the evidence and given his decision accordingly. But that is not the case here, for here no evidence has been at all gone into, and the Judge dismissed the suit upon the first issue of law settled without going into the evidence.

4. The pleader for the appellant then contends that, inasmuch as the Judge had, under the provisions of section 9 of the Procedure Code, a discretion to divide the case into two separate cases; that in this case the Judge did not exercise that discretion properly and judicially in dismissing the case altogether, instead of dividing and hearing it as two separate cases, as that section directs. But it seems to us that there is an answer which is complete and fatal to this objection, and it is this, viz., that the pleader for the appellant cannot show as that the Judge in this instance was ever asked to exercise his discretion, and on the contrary, it seems to us, most likely that he was not so, because the first and the chief objection taken in the grounds of appeal to his decision, is not that he exercised his discretion improperly and unjudicially, but that he was wrong in law in dismissing the case, because of the misjoinder of the causes of action. We think, therefore, that we cannot say that the Judge was wrong in dismissing this case, and we therefore dismiss this appeal with separate costs to the two sets of respondents who have appeared.