
(1878) 04 CAL CK 0018

Calcutta High Court

Case No: None

Ram Tarrun Koondoo

APPELLANT

Vs

Hossein Buksh

RESPONDENT

Date of Decision: April 5, 1878

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 7

Citation: (1878) ILR (Cal) 785

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

It is impossible to distinguish this case from the decision in Mohummad Zahoor Ali Khan v. Thakooranee Rutta Koer 11 Moo. I.A. 468. There the suit, as originally brought against nine persons, was held by the Privy Council to have been wholly misconceived; but they, nevertheless, thought that there was in all probability a good cause of action against one of those defendants upon a bond, and thereupon they make this order. They say: "they have come to the conclusion that the fairer course is to do what the Judge of the Court of first instance might, under the Code of Procedure, have done at an earlier stage of the cause,--namely, allow the appellant to amend his plaint so as to make it a plaint against Rutta Koer alone for the recovery of money due on a bond." That is precisely what has been done here. The plaintiff originally sued upon his khatta-books. There was an objection by the defendant that the plaintiff ought not to have sued upon his khatta-books, but that he ought to have sued upon the hat-chitta. Whether that was a valid objection or not, we need not now consider, nor need we consider whether it was that objection which induced the plaintiff to take the course he did. What he did was this, he asked the Court to be allowed to sue upon the hatchitta. The Munsif, as he was clearly entitled to do under the authority of the decision I have referred to, allowed the suit to proceed upon the hatchitta, and the Subordinate Judge was wrong when he

expressed an opinion that the Munsif was prevented from doing this by the provisions of Section 7 of the Procedure Code. Section 7 applies to a totally different state of things, and in no way prevents the Munsif from making this order.

2. The judgment of the lower Appellate Court must, therefore, be set aside, and that of the Munsif restored. The case will stand decreed upon the hatchitta for the sum of 814 rupees and 12 annas. The special appellant will get his costs of this appeal and of the Courts below.

Prinsep, J.

3. The error of the Subordinate Judge seems to have been caused by his taking the causes of action to have been irrevocably united by the execution of the hatchitta; as the suit was originally laid, the causes of action were distinct. When, however, the plaintiff sued on the hatchitta, they became united, and therefore, as the suit was originally laid, there was no relinquishment within the terms of Section 7 of the CPC as has been held by the Subordinate Judge.