
(1910) 02 MAD CK 0066
In the Madras High Court

Aiyavu Muppan

APPELLANT

Vs

Vellaya Nadan and Others

RESPONDENT

Date of Decision : 15-02-1910

Acts Referred:

Citation : (1911) ILR (Mad) 55

Hon'ble Judges : Krishnaswami Ayyar, J;Benson, J

Bench : Division Bench

Judgement

1. It is found by the Subordinate Judge that the first plaintiff and plaintiffs Nos. 2 to 4 are divided in interest, and have been in possession of separate portions of the disputed land. The plaintiffs allege title under a sale in 1878. This was negatives by the District Munsif. But the Subordinate Judge without finally deciding that question has found a title by adverse possession for more than 12 years in their favour. It is argued for the appellant that the suit is bad for misjoinder of causes of action. The first plaintiff and plaintiffs Nos. 2 to 4 claim different lands and their title as found is by adverse possession of their respective portions. The injury to their rights is by the defendants' trespass. Although the trespass might have been at the same time, the right being separate, the cause of action must be held to be separate. The authorities cited by Mr. Rangachariar are decisive of the question. The decision of the House of Lords in *Smurthwaite v. Hannay* (1894) A.C. 494, referred to in *Subramania Aiyar v. King-Emperor* ILR (1902) Mad. 61, and in *P. and O. Co. v. Tsune Kijima* (1895) A.C. 661, are clear authorities in support of the appellant's contention. Each person being separate in the eye of the law, any act of the defendant affecting the separate right of each gives to each a separate cause of action. The same principle was laid down in *Garter v. Rigby and Co* (1896) 2 Q.B. 113. For Indian eases, we may refer to *Ramanuja v. Devanayaka* ILR (1885) Mad. 361, *Ali Serang v. Beadon* ILR (1885) Cal. 524, and *Salima Bibi v. Sheikh Muhammad* ILR (1896) All. 181. The decisions cited by Mr. Seshagiri Aiyar, who appeared for the respondents, are not in point. They are all cases either of common title or alternative claims arising upon one event- Reference was made to the recent

decision of the Privy Council in (1909) L.R. 36 I.A. 103 (Privy Council) . It was a suit by reversioners in respect of alienations by the widow. Their Lordships of the Judicial Committee were disposed to regard the cause of action as one. But even if it was more than one, they were inclined to hold that Section 578 of the CPC of 1882, cured the irregularity in the joinder of several causes of action, for the parties had not been prejudiced on the merits. Assuming this to be a pronouncement by that tribunal that all misjoinder of causes of action could be cured u/s 578, if there was no prejudice on the merits, a proposition to which we are not prepared to assent in the face of *Smurthwaite v. Hannay* (1894) A.C. 494, where the misjoinder was described by Lord Herschell as much more than a mere irregularity, and it was quoted with approval by their Lordships in *Subramania Ayyar v. King-Emperor* ILR (1902) Mad. 61, we are still inclined to think that the defendants must be held to have been prejudiced by the joinder of the causes of action,

2. It is sufficient to draw attention to the fact that the evidence of adverse possession by the first plaintiff would not be evidence of adverse possession in favour of plaintiffs Nos. 2 to 4 and vice versa. The Subordinate Judge has considered the whole of the evidence as to adverse possession as bearing on the rights of all the plaintiffs. Exhibits B and D which relate to the first plaintiff's lands would have no bearing on the possession of plaintiffs Nos. 2 to 4. We hold, therefore, that there has been a misjoinder of causes of action and that the defendants have been materially prejudiced by such misjoinder. But we do not think that we are bound to dismiss the suit on that account. The plea of misjoinder was not raised in the written statement or at the time of the settlement of issues. An additional issue was framed on that question on the 24th February 1905, when the plaintiff's first witness was under examination.

3. Moreover, Section 99 of the new Code applies to this case. We think the interests of justice will be sufficiently met by directing the Subordinate Judge to return fresh findings on the question of title by adverse possession in the first plaintiff, and plaintiffs Nos. 2 to 4 separately as regards the lands respectively claimed by them. The findings will be returned on the evidence on record in six weeks. Seven days will be allowed for filing objections.

4. [In compliance with the order contained in the above judgment, the Subordinate Judge found the adverse possession; of plaintiffs proved and the second appeal was dismissed.]