

(2001) 02 CAL CK 0010

In the Calcutta High Court

Case No : G.A. No. 655 of 2001 and C.S. No. 320 of 2000

Russel Properties and Estates

APPELLANT

Vs

Indian Alluminium Company Ltd. and Others

RESPONDENT

Date of Decision : 26-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 13, Order 1 Rule 3, Order 2 Rule 2, Order 2 Rule 4, Order 2 Rule 6
West Bengal Court Fees Act, 1970 — Section 11

Citation : 105 CWN 966

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : Deb, for the Appellant; Pratap Chatterjee for the lessee-plaintiff, for the Respondent

Final Decision : Dismissed

Judgement

Dilip Kumar Seth, J.—In this application, amongst others, the following prayer has been made:

(a) The plaint filed in the above suit be rejected and/or be returned to the plaintiff and/or an enquiry be ordered u/s 11 of the West Bengal Court Fees Act. 1970.

In order to support such relief Mr. Deb, learned counsel for the petitioner contends that the suit is barred for misjoinder of cause of action. The cause of action pleaded cannot be joined together under Order 2 Rule 4 of the Code of Civil Procedure. Next he contends that there are misjoinder of parties and that the suit can not proceed. Third point that was taken by him is that the suit has been valued at Rs. 15 lakhs only to create jurisdiction of this court without any foundation. Elaborating his submission he contended that the present one is a suit for eviction in which the claim for damage cannot be incorporated since it is altogether a different cause of action which cannot be joined in a suit for eviction. Similarly, he contends that the claim for damages is a money claim

which is confined against the defendant no. 1 alone and as such defendants No. 2 and 3 cannot be roped in and therefore it is altogether a mis-joinder of cause of action. Then he contends that the valuation of damages at Rs. 15 lakhs is baseless. No particulars have been given as to how such valuation has been assessed. Therefore, the suit should be dismissed.

2. Mr. Pratap Chatterjee, learned counsel for the plaintiff opposing the said application contends that the defendant no. 1 is a tenant under the plaintiff who had taken the property on lease from the defendant no. 2. In paragraphs 14 and 15 of the plaint it has been pleaded that in collusion between the three defendants the defendant No. 1 purported to have surrendered the tenancy to the defendant no. 2 though the defendant no. 1 was the tenant under the plaintiff to whom the defendant no. 9 had given the property on lease. In turn the defendant no. 1 had inducted the defendant no. 3 and that there is collusion between the three defendants. Therefore, there is no scope either of mis-joinder of cause of action or misjoinder of parties as soon the allegations are made against all the three defendants. The cause of action cannot be divided and even if it is so divided or separated in that event the identical question and common question of law and fact would be involved. Be that as it may, in a suit for eviction, damages can very well be included for any wrongful action with regard to the condition under which the tenancy is held. Surrendering of the tenancy to a third party is a breach of contract of tenancy between the plaintiff and the defendant no. 1 and as such a claim for damages with regard thereto is very much maintainable within the meaning of clause (b) of Rule 4 of Order 2 of Civil Procedure Code. He then contends that the valuation has since been made on the basis of the plaintiff's choice which can be questioned only when the defendants show that such valuation demonstrates to be baseless then only the question can be gone into, otherwise it should be decided on evidence at the time of trial, not at this stage. He has relied on a decision in the case of *In re : In Re: Smt. Dalia Ghosh; In Re: Subramanian Rajamani*, . On this ground he contends that the application should be dismissed.

3. I have heard both the Counsels at length.

4. So far as the question of misjoinder of cause of action is concerned, it appears that in paragraphs 14 and 15 of the plaint there are certain pleadings with regard to collusion between the three defendants as contended by Mr. Chatterjee. It is alleged that the defendant no. 1 is tenant under the plaintiff who had taken the property on lease from the defendant no. 2 and in turn the defendant no. 2 purported to induct the defendant no. 3. Thus, it appears that all these three persons are necessary parties in the suit for eviction and recovery of possession. Inasmuch as the recovery of possession if effected would affect the right of defendant no. 3 as well as defendant no. 2 if the statements of the plaint are taken to be true. While considering such question at this stage, it is only the statements made in the plaint that are to be taken into account and the same are to be considered as true. As such, on the basis of such pleadings it cannot be

said that there is any mis-joinder of parties or cause of action. Be that as it may, the claim for damages cannot be said to be foreign with regard to the cause of the action for recovery of possession in eviction suit. Putting the defendant no. 3 into possession is definitely a breach of the condition of the tenancy. The breach of the contract of the tenancy as alleged to have been committed by reason of the alleged surrender of the tenancy by the defendant No. 1 to the defendant no. 2 and induction of the defendant no. 3 by the defendant no. 2. Therefore, by reason of such transfer of possession by the defendant no. 1 definitely the plaintiff can claim that on account of breach of contract of tenancy between the plaintiff and the defendant no. 1, he has suffered damages which can be included under clause (b). Rule 4 of Order 2 of CPC.

5. Order 2 Rule 4 of the Code deals with the questions as to what causes or claims can be joined together. It provides that other than those specified in the three exceptions no claims, without the leave of the Court, can be joined together in a suit for recovery of immoveable property. It prohibits joinder "of a claim dissimilar in character with a claim for immoveable property. However, it can be done with the leave of the court first obtained. While granting leave court has to bear in mind the provision contained in Rule 6 Order 2. Such leave can be granted if two causes can be conveniently disposed of in one suit. But no leave is necessary where claims are joined in which the relief sought is based on the same cause of action, as provided in clause (c) Rule 4 Order 2 of the Code. At the same time it must be borne in mind that under Rule 2 Order 2 every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Reliance may be placed in *Gapal Das vs. Phulchand*, AIR 1946 Cal 357. In AIR 1932 216 (Privy Council), it was held that in suit for possession of impartible estate claim for rents, royalties and other monies can be included without the leave since based on same cause of action. In fact if on the same cause of action plaintiff is entitled to different claims unless leave under Order 2 Rule 2 is obtained, he will be precluded from suing for those reliefs not included in the suit.

6. Rule 6 does not apply to misjoinder of causes but to cases where several causes of action have been properly joined in one suit and the cause of action so joined can not be conveniently tried together. Reference may be made to *The Corporation of Calcutta Vs. Radhakrishna Dev and Others*, . Under Rule 6 it is not necessary that the court shall require the plaintiff to file separate plaints. In such a case the court will direct separate trial. For such purpose it may require the plaintiff to amend his plaint in such manner that the allegations against the different sets of defendants are framed for the purpose of separate trials. It was so held in AIR 1941 209 (Nagpur); *Harwari Lal vs. Naraindas*, AIR 1951 P&H 233 (Simla). In *Ranjit Kumar Pal Chowdhury Vs. Murari Mohan Pal Chowdhury and Others*, , this court had held that the rule of multifariousness is a rule of convenience and it is the primary discretion of the court to decide whether the plaintiff should be allowed to proceed with different causes of action in the same suit upon a consideration of all the facts and circumstances of the case.

7. In the present case the damages that has been asked for arises out of the same cause of action. Cause of action is a bundle of facts. Here the defendant no. 1, a tenant under the plaintiff, who is a lessee under the defendant no. 2, has surrendered the tenancy to the defendant no. 2, who in turn has inducted the defendant no. 3. All these facts are related to each other and combines together to form part of the same cause of action on which the plaintiff has based his claim. Thus the claim being based on one and the same cause of action, the plaintiff is bound to join the claims together. Out of the same cause of action different reliefs are being claimed. Unless it is so done the plaintiff would be precluded to claim the relief afterwards, if not claimed in the same suit by reason of Order 2 Rule 2. Therefore, so far as these grounds of misjoinder of parties or cause of action is concerned," is of no substance.

8. Under - Rule 3 Order 1 of the Code, all persons, against whom relief arising out of the same act or transaction or series of acts or transactions is sought for, or where if separate suit is brought against such person any common question of law or fact would arise, can be joined as defendants in one suit. It is under Rule 3A when the trial may be embarrassed or delayed on account of joinder of defendants the court may order separate trial or pass such order as may seem expedient to it. Court may pronounce judgment in such a case against one or more of such defendants according to their respective liabilities in terms of Rule 4. By reason of Rule 5 it is not necessary that every defendant shall be interested in all the reliefs claimed in the suit. Rule 9 prescribes that by reason of misjoinder or non-joinder of parties no suit shall be defeated, except in cases of non-joinder of necessary parties.

9. The decision in Krishna vs. Mohammad, 33 CLJ 369, Anukul vs. Pravash, 51 CWN 295 , Sri Ram Krishna Das Vs. Bindeshwari Prasad and Others, , Sm. Nagendra Bala Debi and Others Vs. Pravash Chandra and Others, , laid down the factors to be considered in order to determine whether a suit satisfied the conditions of Rule 3 are (I) could the right to relief against the defendants be said to be in respect of or arising out of the same act or transaction or series of acts or transactions and (ii) would any common question of law or fact arise if separate suits were filed against different defendants. The question depends not on common cause of action but on common basis of acts or series of acts as was held in Ram Kumar (supra) and Employees' State Insurance Corporation, Madras Vs. Md. Ismail Sahib and Others, . In Shew Narayan Singh Vs. Brahmanand Singh and Others, , this court had held that in a suit by A against B for damages for breach of Contract, CD and E who are alleged to have conspired with B to bring about the breach may be joined as defendants. In Umabai vs. Bhau, 34B 358, Mawji vs. Kuviji, 31B 516, AIR 1938 461 (Nagpur) , it was held that all the parties may not be interested in all the reliefs claimed.

10. In the present case the alleged surrender of tenancy by defendant no. 1 to the defendant no. 2 and the induction of defendant no. 3 by the defendant no. 2, the chain, is a series of acts or transaction, which is but one cause of action. The

question of fact and law involved in this case would be common if separate suits are filed against these three defendants. Thus the facts of the present case satisfies the test as discussed above.

11. By reason of the observation as made above, Rule 13 Order 1 or Rule 7 Order 2 cannot be attracted so as to hit the maintainability of the suit. On the other hand, such objection having been taken, if it can be decided without evidence, the same may be decided at this stage, and if it requires any evidence, in that event the same may be postponed as an issue in the suit itself. The question is also relevant with regard to Rule 6 of Order 2 of CPC which prescribes that the joinder of cause of action if embarrasses the court or delays the trial or is otherwise inconvenient, the several defendants cannot be joined together. In the present case, there is nothing to show that this will embarrass the trial or delay or otherwise inconvenience the process. On the other hand it is convenient for the court to try all the issues together and the same will neither cause embarrassment nor would delay the trial.

12. In these circumstances, the objection with regard to misjoinder of cause of action and misjoinder of parties cannot be sustained and Is hereby rejected on merit. So far as the question of valuation is concerned at the moment there is nothing to show which demonstrates that the valuation is arbitrary or unreasonable it cannot be said to be exaggerated. In view of the ratio decided in the case of in re : In Re: Smt. Dalia Ghosh; In Re: Subramanian Rajamani, . such a question cannot be held to be otherwise than what has been laid down in paragraph 6 thereof, which runs as follows :

6. In the case of Smt. Nandita Bose Vs. Ratanlal Nahata, and Tara Debi vs. Shri Thakur Radha Krishna Maharqj. Their Shebati Chandreswar Prasad and Moheswar Prasad and Anr., reported in the same volume at page 2085 the ratio as propounded by the Supreme Court appears to be that the liberty to value determine the form on the basis of such valuation lies with the plaintiff normally unless the valuation put by the plaintiff can be demonstrative shown to be arbitrary and unreasonable. The term "demonstrate" means "to make manifest"; "to give proof of : "to prove with certainty"; to exhibit by practical means". To express succinctly, the valuation has to be established patently to be arbitrary and unreasonable. In the instant case, no material appears to have been placed before the courts below to satisfy the above as laid down by the Supreme Court and we agree with the view expressed by the court below that to hold at this stage that the valuation was arbitrary or unjust would be to pre-judge the question. It is pertinent to consider in this connection that it has also been laid down by a Division Bench of this court in the case of Monirampore Cultural Association Vs. Monirampore Junior High School and Others, , that the court will consider such questions and take into consideration the fact that the jurisdiction of higher forum is not ousted even if on the conclusion of the trial the suits are found to have not been properly valued.

13. Having regard to the facts and circumstances of the case at the moment

nothing has been shown by Mr. Deb to demonstrate that the valuation is arbitrary or unreasonable. Since this question is to be decided on the basis of the pleadings made taking the same to be true, therefore at the moment the court has to go by the pleadings made. On the basis of the pleadings it does not appear that the said valuation demonstrates arbitrariness or unreasonableness. Therefore, this question cannot be gone into at this stage without evidence. Therefore, this point is kept open to be agitated along with the trial as an issue in the main suit.

14. For all these reasons this application fails and is accordingly dismissed. All parties concerned are to act on a xerox signed copy of this dictated order on the usual undertaking.