

**(1927) 08 CAL CK 0026**  
**In the Calcutta High Court**

Sadhu Kathalia and Others

APPELLANT

Vs

Dhirendra Nath Roy and Others

RESPONDENT

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**Date of Decision :** 04-08-1927

**Acts Referred:**

Specific Relief Act, 1877 — Section 42

**Citation :** AIR 1928 Cal 425 : 113 Ind. Cas. 247

**Hon'ble Judges :** Rankin, C.J.; Mitter, J

**Bench :** Full Bench

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## Judgement

Rankin, C.J.—This is a some what unusual case and a very good illustration of the difficulties which are created for the lower Courts and which they themselves assist to create. The plaintiffs are eight persons called Boy who claim to be interested in a certain revenue paying estate under the Collectorate of Jessore and to have in addition a kaيمي mokurari mourashi jote thereunder; in other words they claim to be entitled to the superior interest in the suit lands and the share they claimed is 13 annas four pies share. Among the many defendants there is a group of defendants described as co-sharer pro forma defendants who are entitled to the remaining share. The cause of action might be very simply stated. It is that six persons, one Erfanaddi and five others, whom I may call the Bairagis, having agreed on certain terms to become tenants of certain lands and to execute a kabuliyat refused to do so and by executing and causing to be registered a false kabuliyat which the plaintiffs never accepted and by seizing by force the lands of schedule (gha) became trespassers whom the plaintiffs are entitled to eject.

2. The plaintiff's case is that these six persons have put themselves into exclusive possession of the properties of Schedule (gha) and that they have no right or claim to be in occupation as their tenants. On any ordinary principles such a suit would be brought against those six persons and those only, it being elementary that the proper defendants in an action of ejectment are the persons in possession. That however did not content these plaintiffs. They impleaded

apart from their cosharers 107 persons in addition to the six persons who have been described in the cause-title as principal defendants. These 107 persons are described in the cause-title as pro forma defendants. When the plaint is examined it contains no claim whatever for relief against any of the 107 pro forma defendants. It contains two statements with reference to them that have any importance. One is that these 107 persons are or that some of them are tenants under the plaintiffs of other lands. There is no suggestion that they are not perfectly law abiding and well behaved tenants. The second is a statement that there was an arrangement by which these persons, represented by one of their number made, a bargain with the plaintiffs, and apparently with the principal defendants also, that the plaintiffs would give them tenancy of certain other lands-the lands in Schedule (ga). The lands which the principal defendants are said to have trespassed upon and the lands which these pro forma defendants are said to have some promise of tenancy in are different lands with the exception of two plots - plots 72 and 485. Of these two plots I shall say something hereafter. These two statements referring to the pro forma defendants are the only statements affecting them so far as I can discover in the plaint and there is no explicit prayer for any relief whatever at the end of the plaint so far as these 107 persons are concerned. In these circumstances before issuing summonses upon 107 persons one would have thought that the trial Court would have examined this plaint under Order 7, Civil P.C. and would have rejected or returned it for amendment so as to disclose some cause of action. It may, however, be said that the plaint which is somewhat complicated was difficult to understand and that such a summary proceeding was not thought desirable.

3. It appears that summonses were issued, but no written statements were filed on behalf of these pro forma defendants. Some time afterwards the plaintiffs compromised with "the principal defendants and the case came before the Court for a decree. As against the principal defendants the suit WAS decreed in terms of the compromise. As against the absent pro forma defendants something, which was supposed to be a decree, was passed ex parte. It was a statement that as against these pro forma defendants the suit was decreed ex parte, but it did not state what was decreed. It did not give any declaration even by reference as no amount of reference to the plaint will enable anybody to see that anything in particular was asked for as against these pro forma defendants. What as against them was decreed and was supposed to be meant it is not easy to discover, I am glad to say that I do not find that this decree was passed against the pro forma defendants for any costs. Thereafter several of these defendants applied to the Court for restoration of the case so far as they were concerned and the decree as against them was set aside and they were allowed to file written statements. A written statement was put in on their behalf in which they objected, first, that the plaint disclosed no cause of action against them and secondly, that certain of them had claims to particular plots of the lands in suit as being persons who were in possession as tenants of those plots. On this basis they objected to the plaintiff's suit as against the principal defendants being

decreed in terms of the solenama.

4. The matter went to trial on that basis. No amendment was made in the plaint, but certain issues were framed which include issue (1):

Have the plaintiffs any cause of action against the answering defendants? (2) Is the suit barred by limitation? and (6). Have the answering defendants any tenancy in respect to the lands mentioned in their written statements? Is the plaintiff entitled to obtain khas possession to those lands?

5. The learned Subordinate Judge who tried the case found that no one of these answering defendants hid any claim to, or had any possession in, or any right to, any of the plots with the exception that defendant 92 had a tenancy right in dag No. 33. Accordingly he framed what was considered to be a suitable decree The answering defendants 11, 12, and 14 who made no claim to any of the plots were struck out and they, therefore, escaped from the suit altogether. As regards the other defendants those who had failed to establish any right to any plot he declared that they had no title or possession to the plots to which they laid claim and no locus standi to question the plaintiffs' title to those dags or claim to khas possession to the suit lands. It will be observed that these defendants' claim to be in possession of, and to have right to, certain plots was fought out and tried in a suit in the cause title of which they were called pro forma defendants and when the learned Subordinate Judge came to defendant 92 who had established his claim to plot 33 he dealt with the matter in this way he removed defendant 92, because he had succeeded, from the category of pro forma defendant to the category of principal defendant. The learned District Judge in the end affirmed (with a slight correction for the fact that the plaintiffs were only entitled to 13 annas 4 pies share), the decree of the Subordinate Judge. He too declared that the various defendants except No. 92 had no locus standi to question plaintiffs' title or right of khas possession in respect to the various dags. He too made the pro forma defendant 92 a principal defendant because as to one dag he has succeeded.

6. On appeal before us it has been argued on behalf of these defendants that the whole proceedings were misconceived, that there were no proper pleadings, no claim for relief, no statement of facts which would ground any right to relief against them. It was also contended before us that the Courts below have not properly dealt with the question of limitation inasmuch as the case being one under Article 142 the plaintiffs had to prove that they were in possession within twelve years. In my judgment there is no reason to think that the Courts below have made any mistake upon the matter of limitation. Their findings are that these defendants are not in possession at all and as it is clear that none of them claimed any right except a tenancy right it is difficult to see how the plaintiffs' claim, if they have any claim against the pro forma defendants, is defeated by any principle of limitation. But I entirely agree with the contention on behalf of the defendants that the proceedings in this case have been an abuse of the process of the Court.

7. Yesterday, being desirous to ascertain whether any of these 106 pro forma defendants (I omit defendant 8) were persons who, prior to the issue of the plaint, had by word or act done something to deny the plaintiffs' title to or right to possession of any portion of the suit lands, we adjourned this case in order that the learned vakil for the plaintiffs might have an opportunity to see whether there was any evidence of any such conduct which would justify the inclusion of the pro forma defendants in this plaint. We have been this morning informed by him that at the time when the plaintiffs issued their plaint they had no knowledge of any claim on the part of any one of those 106 defendants to the suit lands or any part thereof.

8. In these circumstances, we have to consider what effect we ought to give to the contention on the part of the appellants that these proceedings as against the pro forma defendants have been a scandal from first to last. It is quite clear that the real reason why summonses were issued on these 106 persons was simply this : that the lands of the plaintiffs having been at various times occupied during a time of dispute between the plaintiffs and the Choudhuris by various squatters and other people, the plaintiffs were apprehensive that some of those 106 persons might hereafter lay claim to some right or interest in the suit lands. They had no reason to suppose that any such claim had been made. They did not know in the least which defendant was likely to make a claim to which plot and the plaint was really a public circular issued as widely as possible calling upon any person out of the 106 who had any mind to invent or discover or assert any claim to any part of the suit lands to come in and make a claim now, or ever after hold his peace. No other interpretation can be put upon this plaint. I need hardly say that that is not a proceeding which can be tolerated by a Court. When this plaint was issued and summonses were served the first thing which the pro forma defendants should have done was to apply at once to have it amended or struck out. If it was to be amended it was necessary for it to contain statements showing that the pro forma defendants had done something which entitled the plaintiffs to sue them at all, and until the plaint alleged something of that sort it is clear enough that there was nothing to which any written statement need be directed. It is a matter of considerable wonder that any learned Judge should have decreed this suit in the first instance ex-parte against any of those defendants. The defendants in question however failed to do that and in failing to do that they committed their first mistake. They filed in the end a written statement in which they not only took the line that they were accused of nothing that was actionable but they took the line that they were in possession of and had a tenancy right in certain of these dags. That is a question upon which they invoked the Court's decision and that question was litigated with the plaintiffs and these defendants have lost. It is true that they did not abandon their contention upon issue 1. They then went to the learned District Judge. Again they urged that there was no cause of action against them. Again they urged that they were in possession and had a tenancy right to certain of these dags. Again they lost and they have come before this Court with the same two pleas:

first that their case has not been dealt with properly on the merits and, secondly, that as against them there was no case to decide. If there were any reason to think that the absence of proper pleadings in this case had prejudiced these defendants with regard to their claim to particular plots our course, would be very clear, but there is no question of that sort.

9. The next question is whether there is any real cause of action disclosed now at the end of the day by the evidence in the case against these defendants. It is conceded that the evidence in the case does not show that before the plaint was issued any claim was being made by them, but it is said that as they made a claim in their written statement and as the merits of that claim have been adjudicated upon there is no reason now to set aside the proceedings merely because their claim was made after the plaint instead of before. No doubt from a common sense point of view there is a great deal in this contention and we have to consider whether that contention ought really to prevail. The idea that any one of these 106 people is a pro forma defendant in any proper or intelligible sense is one which has to be discarded. If a person has denied the plaintiffs' title and asserted possession in himself so that the plaintiff is entitled to sue him for a declaration removing a cloud upon his title such a defendant is *lira* no sense of the word as pro forma defendant. "Pro forma defendant" is not a term that ever ought to appear in the cause title of any suit or proceeding. It does happen sometimes that a person is impleaded merely for the sake of conformity as, for example, the plaintiffs' co-sharers in the present case. A person may be impleaded to represent the legal interest although he is a bare trustee having no real interest in the matter, or he may be impleaded because he has a right or title which is affected by the order sought though not prejudicially affected. There are circumstances under which it is not improper in ordinary language to describe a defendant as being joined pro forma. But the present case is a very different one. The defendants are persons against whom the plaintiffs if they are asking for anything - are asking for a declaration. The plaintiffs would seem to have come u/s 42, Sp. Rel. Act which entitles a person entitled to any legal right as to any property to institute a suit against any person denying or interested to deny his title to such character, but I need hardly say that it is *prima facie* a very curious discretion to grant a declaration against persons who have made no specific claim hostile to the plaintiffs' interest and who have in no way asserted or formulated any claim of a hostile character.

10. If at the time the plaint had been issued the plaintiffs had said that the defendants so and so (mentioning those defendants who ultimately appeared) claim to be entitled to dags Nos. so and so and the plaintiffs ask for a declaration against them that they are not so entitled their plaint would have been in substance good. They did not say that, but the defendants made a claim in their written statement and the question is whether these appellants can at the same time contend that they were in possession of the suit lands with tenancy-interest and also that prior to the plaint they had done nothing to justify the plaintiffs in bringing their suit against them. In my judgment those two positions ate

inconsistent and, although the plaintiffs' course has been as irregular as it well could be, I think that these appellants by claiming not merely to have a right in but to be in possession of parts of the suit lands have debarred themselves from succeeding on the ground that the plaintiffs cannot prove any claim on their part before the issue of the plaint. That is the point on which this appeal turns.

11. As regards defendant 8 : it seems to me that he was possibly a proper defendant though not a pro forma defendant in respect of dags Nos. 72 and 485 because it would seem that he had been the plaintiffs' tenant in respect of these; but the plaintiffs had purchased the holding in execution of a decree and had only got symbolical delivery of possession from this defendant. When the plaintiffs came to evict a trespasser from those plots, defendant 8 as a tenant from whom the plaintiffs never obtained possession was not unreasonably impleaded.

12. With the exception of defendant 8 I think the plaintiffs' proceedings against all the other "pro forma defendants" have been extremely irregular. I hope that if ever again a Court finds a hundred defendants called pro forma defendants against whom there is no real case made in the plaint it will take the necessary steps to deal with that situation and put an end finally to the litigation. It is no part of the duty of a law Court to issue notices round the world to persons to come in to make claims, if any, or take objections if any, to the plaintiffs' evicting the persons who are in actual possession of the plaintiffs' property.

13. I think, therefore, that this appeal ought not to succeed and should be dismissed but without costs.

Mitter, J.

14. I agree.