

(1917) 06 AHC CK 0025
In the Allahabad High Court

Saiyed Afzal Shah and Another

APPELLANT

Vs

Lachmi Narain and Others

RESPONDENT

Date of Decision : 23-06-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1

Citation : 42 Ind. Cas. 856

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This is a second appeal which comes before us under the following circumstances. The plaintiffs alleged themselves to have acquired certain property at public auction. They alleged that, under circumstances perhaps amounting to fraud on the part of the judgment debtor, the property was put up to sale a second time and was purchased in different lots, by different persons. On this they impleaded three different sets of defendants, claiming a declaration of their own title, recovery of possession, and mesne profits-Separate defences were filed by the members of the different sets of defendants, and in each of these defences the particular defendant concerned protested that he had nothing to do with the property specified in the plaint except only one single item of the same. Arising out of this plea of fact, the point was taken that the suit was bad for misjoinder of causes of action and that each defendant or set of defendants should- have been separately sued for ejectment as a trespasser in respect only of such items of property as were in the possession of each defendant or defendants severally. A curious feature of the case was that, when the pleadings of the parties were complete, it was apparent that a portion of the property specified in the plaint was not claimed by any of the defendants at all, that is to say, the plaintiffs were claiming to recover possession of some property from defendants who repudiated having anything to do with it. In the result the Court

of First Instance dismissed the suit, and this dismissal has been affirmed by the Additional District Judge in appeal.

2. The only point dealt with by the lower Appellate Court was that the suit was bad for multifariousness. As a matter of fact there had been an order by the predecessor in office of the learned Judge who finally disposed of the appeal, which was no doubt well intended, being an effort on the part of the Court to bring the actual question in dispute to a final adjudication, but the actual effect of that was to make the confusion worse. The learned Judge directed the plaintiffs to implead a number of fresh defendants, presumably on the ground that they were the persons in possession of those portions of the property in suit which were not claimed by any of the original defendants. This order was complied with in a curious fashion, by the addition of two new defendants in the specification of defendants in the plaint, without the addition of any statement of any sort or kind in the body of the plaint to suggest what the cause of action against the defendants thus added was supposed to be. However, the suit having been, as already stated dismissed by the lower Appellate Court the plaintiffs come to this Court in second appeal, and in their memorandum of appeal as drafted they simply call in question the finding of law on which their suit was dismissed by the Court below. The pleas in the memorandum of appeal are that the suit is not bad for multifariousness, that it was maintainable as framed and that the reliefs claimed therein could have been granted in one suit against all the defendants. It is unnecessary for us, as the case now stands, to go further into this matter beyond saying that we could not have acceded to this contention- There was no allegation in the plaint of any joint action or community of interest as between the different sets of defendants. If the principle suggested by the memorandum of appeal before us were correct it would follow that any owner of property might bring one single suit against an unlimited number of wholly unconnected trespassers on different portions of his property, merely on the ground that he himself owned the entire property under a single title. This is a proposition which could not be affirmed. It is idle for the appellants to refer us to those rules in the CPC which refer to the circumstances under which different defendants may be jointly impleaded on a single cause of action. The present is not a case of an alleged misjoinder of defendants on a single cause of action, but of alleged misjoinder of causes of action. In the course of arguments before us it was strongly represented to us on behalf of the plaintiffs-appellants that their suit ought not to have been allowed to fail altogether upon such a merely technical ground. Various suggestions were put forward as to the manner in which the defect, if found to exist, might be remedied. Finally, we gave the plaintiffs time to consider their position, in order that they might, if they thought fit, apply to this Court for permission to withdraw from the suit under Order XXIII, Rule 1 of the Code of Civil Procedure. An application to this effect has now been laid before us, and we have heard both parties concerning it. The jurisdiction of this Court to take action under the rule above mentioned, even at the stage of second appeal, is not questioned, and

such jurisdiction has from time to time been exercised in suitable cases. Neither can it be denied that the suit now before the Court is one which must fail by reason of a formal defect, namely, that of misjoinder of causes of action in a single suit, that is to say the error made by the plaintiffs in filing one single suit when they ought to have brought three or more is clearly a defect of a formal nature having nothing to do with the merits or otherwise of the plaintiffs' claim, The only question, therefore, for us to consider is whether this is a proper case for the exercise of our discretion in favour of the plaintiffs. On a fair consideration of the matter it seems to us that, subject to full compensation being made, to the defendants in the matter of costs for the expenses to which they have been subjected up to this stage in the litigation, the case is a suitable one for permitting the plaintiffs to abandon the untenable position which they took up when they filed this suit, leaving their rights otherwise unimpaired, so that they may seek redress from the law for any wrong which they may have suffered by the institution of such properly framed suit or suits as may be found to be necessary. First, we make the order which we propose to pass subject to this contention, that all costs incurred up to this date by any of the defendants-respondents in all three Courts, including in this Court fees on the higher scale, are hereby made payable by the plaintiffs-appellants. Subject to this condition, we set aside the decrees of both the Courts below and, in place thereof, pass an order permitting the plaintiffs to with-draw from the present suit with liberty to institute such fresh suit, or rather fresh suits, in respect of the subject-matter of the present suit as they may be legally advised.