

**Jamiluddin Vs. Shamsuddin**

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**SooperKanoon Citation :** [sooperkanoon.com/485308](http://sooperkanoon.com/485308)

**Court :** Allahabad

**Decided On :** Nov-18-1998

**Reported in :** 1998(4)AWC384

**Judge :** D.S. Sinha and ;R.K. Singh, JJ.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9 and 99 - Order 2, Rules 3 and 3(1)

**Appeal No. :** Civil Revision No. 191 of 1985

**Appellant :** Jamiluddin

**Respondent :** Shamsuddin

**Advocate for Def. :** K.M. Dayal, ;Atul Dayal, ;L.M. Singh, ;Dinesh Rai, ;S.M.A. Majid and ;R.K. Asthana, Adv.

**Advocate for Pet/Ap. :** Haider Husain, Adv.

**Judgement :**

**D.S. Sinha, J.**

1. Heard Sri Haidar Husain, learned counsel appearing for the defendant-revisionist and Sri K. M. Dayal, Senior Advocate, appearing for the plaintiff-opposite party.

2. While hearing this revision, a learned single Judge concluded that on the question whether one common suit for eviction of a tenant from two separate tenements is maintainable, there is dissonance between the two single Judge decisions rendered in Ram Chandra v. Judge, Small Causes Court, Farrukhabad and others, 1984 (1) ARC 138 and Smt. Samundari Devi v. Shanti Prakash Gupta, 1986 UPRCC 561. According to the learned single Judge, views similar to the one expressed in the case of Smt. Samundari Devi v. Shanti Prakash Gupta (supra) were also expressed by another single Judge in Devesh Chandra Gupta v. Dina Nath, 1992 (1) ARC 3.

Therefore, at the behest of the learned single Judge, the matter has been referred to this Bench by the order of the Hon'ble the Chief Justice dated 12.4.1997 for resolving the discord.

3. In Ram Chandra v. Judge, Small Causes Court [supra], it has been held by the learned single Judge that 'one suit against two tenements of the same tenant cannot be filed. It shall be bad for joining two different cause of action.'

4. in Smt. Samundari Devi v. Shanti Prakash Gupta (supra), setting aside the decree of the trial Judge dismissing the landlord's suit, inter alia, on the ground that the ejection of the defendant from two distinct tenements, one residential and the other commercial, another learned single Judge held that the 'decision of the trial Judge.....that one single suit in respect of the two tenements was not maintainable is not in accordance with law.....' To buttress his view, the learned Judge placed reliance upon Order II, Rule 3 (1) of the Code and the Full Bench decision of this Court rendered in Ambika Upadhaya v. Nakched Upadhaya, AIR 1955 All 112.

5. With reference to the present controversy, the decision of the third learned single Judge in Devesh Chandra Gupta v. Dina Nath (supra) is substantially on the line of the decision in Smt. Samundari Devi v. Shanti Prakash Gupta (supra).

6. Neither has it been nor can it be gainsaid that the provisions of the Code of Civil Procedure, 1908 (hereinafter called the 'Code') do apply to a civil suit for eviction of tenant instituted in civil court.

7. Answer to question referred is embedded in Rule 3 of Order II of the Code which is reproduced below :

'3. Joinder of causes of action.--(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.'

8. Sub-rule (1) of Rule 3 of Order II of the Code clearly permits a plaintiff to unite in the same suit more than one causes of action against the same defendant, or the same defendants jointly. Thus, a suit cannot be dismissed for joinder in the same suit several causes of action against the same defendant, or the same defendants jointly.

9. In the present context, it is appropriate to notice the provisions contained in Section 99 of the Code also. It prohibits reversal or substantial variation of a decree or remand by appellate Court on account of any misjoinder or non-joinder of causes of action unless it affects merits of the case or the jurisdiction of the Court.

10. The dictum in the decision handed down in *Ram Chandra v. Judge. Small Causes Court* (supra) that 'one suit against two tenements of the same tenant cannot be filed.' and 'It shall be bad for joining two different cause of action.' is incompatible with the provisions contained in sub-rule (i) of Rule 3 of Order II and Section 99 of the Code. That being so. It is per incuriam and must perish. Accordingly, the decision is overruled.

11. The two single Judge decisions rendered in *Smt. Samundari Devi v. Shanti Prakash Gupta* (supra) and *Devesh Chandra Gupta v. Dina Nath* (supra), so far as they relate to the controversy in question, are in accord and harmony with the

statutory provisions of the Code. The said decisions, to the extent indicated hereinbefore, are, therefore, approved.

12. Clearly, therefore, inevitable answer to the question under reference is that for ejection of the same tenant, or the same tenants jointly/rom two or more tenements, one suit by the landlord is legally permissible : and that such a suit cannot be dismissed for misjoinder of causes of action.

13. Let the record of the case be placed before the learned single Judge for deciding the matter on merits in the light of the above answer.

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