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Court : Kolkata

Decided On : Apr-22-1907

Reported in : (1907)ILR34Cal662

Judge : Chitty, J.

Appellant : Aldridge

Respondent : Barrow

Judgement :

Chitty, J.

1. This is a suit by six members of the Calcutta. Police force against the editor and proprietor of the paper known, as the 'Indian Daily News,' to recover Rs. 20,000 as damages for libel. The alleged libel is contained in two articles which appeared in the issue of the above paper on the 17th and 19th July 1905 and in an article reproduced in the 'Indian Daily News' on the latter date from another paper, the 'Statesman.' The articles dealt with what was known as the 'Sobha Bazar, murder case.' The plaintiffs were not alluded to by name, but aspersions were cast on the Calcutta Police with reference to their action in that matter, and the plaintiffs who, it is said, were the officers, or some of the officers, in charge of that case, have taken the remarks as applying to themselves, and making common cause, have filed this suit for the purpose of vindicating their several characters. Five issues were raised:

(i) Is the suit bad by reason of misjoinder of parties and of causes of action?

(ii) Do the articles complained of apply to any and which of the plaintiffs?

(iii) Are the articles complained of, or any of them, capable of the construction alleged by the plaintiffs in paragraph 6 of the plaint?

(iv) Were the articles complained of published in respect of matters of public interest, and, if so, are they a fair and honest discussion of, and comment upon, the reports of the proceedings in the trial of Jogessur Ahir alias Girish Goala as reported in the public press?

(v) Are the plaintiffs entitled to any and what damages?

2. By consent, the consideration of issue (i) was taken up as a preliminary point, and that is the only matter to be disposed of at the present stage. The point, which is one of procedure, is of considerable importance. It resolves itself into two questions, (a) whether the suit as framed can lie, and (b), whether, if it cannot, some one of the plaintiffs can be permitted to carry on the suit, so far as it relates to himself; the claims of the other five being struck out, and the plaint amended accordingly. The first question does not to my mind present any great difficulty, I cannot see how these six plaintiffs can possibly combine and bring one suit. The rule of procedure which governs the matter is contained in Section 26 of the Civil Procedure Code, the first sentence of which runs as follows:--'All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action.' Thus far the Section reproduces the English order XVI, Rule 1 with the addition of the all important words 'in respect of the same cause of action.' The expression 'cause of action,' as it appears in various Sections of the Civil Procedure Code, has been the subject of much discussion. It has been pointed out that it does not always bear precisely the same meaning. In its wider sense it signifies the whole bundle of facts which a plaintiff is called upon to prove, in order to substantiate his claim, that is to say, both the right and its infringement. In the narrower sense it refers only to the infringement of the right. It is unnecessary for me to discuss which of the two meanings should be placed upon the words 'cause

of action' as they appear in this Section, as I am bound by the decision of the Division Bench of this Court in the case of Haramoni Dassi v. Hari Churn Choudhry (1895) I.L.R. 22 Calc. 833. There it was held that the expression 'cause of action' occurring in Section 26 is used not in its comprehensive, but in its limited sense, so as to include the facts constituting the infringement of the right but not necessarily also those constituting the right itself. That interpretation I accept without demur, but it must be borne in mind that that was a suit for possession of immoveable property, and the right claimed by the plaintiff and alleged to have been infringed was a single right common to all or vested in some or other of them. This is an action in tort, and must be governed by somewhat different considerations. Here it is not a single right that has been infringed, but six separate rights. It is perfectly clear that the right in this case is that of each plaintiff to his own good name and reputation. That is essentially a personal right, so much so that in all cases of libel and slander the maxim actio personalis moritur cum persona applies, and if either party die before verdict the action is at an end. A has, therefore, no concern with the action as brought by B, nor B with that brought by C. Each is interested only in vindicating his own character and reputation. It is true that the injury may have been caused by one act of the defendant, as for instance in the case of a railway accident causing injury to several passengers, or, as is here alleged, of a collective libel on several individuals. The causes of action of the persons injured will none the less remain separate and distinct. There cannot in such cases be said to be one or the same cause of action.

3. The case most relied upon by plaintiffs' counsel, indeed the only case even apparently in his favour, was that of Booth v. Briscoe (1877) L.R. 2 Q.B.D. 496. In that case the plaintiffs were eight trustees of certain charities and brought an action against the defendant for a libel contained in a letter commenting on the improper management of the charities by 'the trustees.' It was held that under the provisions of order XVI, Rule 1 these eight persons might join as plaintiffs. It was conceded that they could not have done so prior to the Judicature Act, and a perusal of Bramwell L.J.'s judgment clearly shows that if the words of Rule 1 had been identical with those of Section 26 of the Civil Procedure Code, the decision must have been the other way. He says 'I am still of opinion they had eight causes of action and that they might have brought eight actions, and the question is

whether under the Judicature Act any difference has been made so that they can bring one action. Where a tort has been done, the tort is a separate tort to each man who complains. If indeed there were a joint tort, for instance slander of several persons in partnership, the persons injured would have joined and maintained the action, but could have maintained the action for the joint damage only. Here there is no joint damage. Bach man's character, if there is a libel, has been separately libelled' (2). He then proceeds to discuss the bearing of order XVI, Rule 1 upon that case, but it follows from the other remarks quoted that had that rule contained the words 'in respect of the same cause of action,' the joinder could not have been allowed. That case was very similar in its facts to the one before me. It was conceded by plaintiffs' counsel that here six suits might have been brought. How could there be six suits for one-cause of action? The case of Booth v. Briscoe (1877) L.R. 2 Q.B.D. 496 stands alone, and, as I have endeavoured to point out, it does not, having regard to the difference in the wording between order XVI, Rule 1 and our Section 26, really assist the plaintiffs. On the other hand, the authorities are clear that the plaintiffs under such circumstances cannot join in bringing one suit: see Smurthwaite v. Hannay [1894] A.C. 494. which was a case of contract, and P.& O. Co. v. Tsune Kijima [1895] A.C. 661 which was a case of tort. Some attempt was made to argue that the six plaintiffs here had a unity or community of interest, but I must confess I am unable to see how that can be. Then it was suggested that because the libel charged the Calcutta Police with conspiracy it made the cause of action one. The charge of conspiring to do a wrongful act or acts may be one form of libel, no doubt, but the particular form of the libel cannot possibly affect the procedure or the plaintiffs' mode of vindicating their characters. In Booth v. Briscoe (1877) L.R. 2 Q.B.D. 496 the libel was, so to speak, a 'joint' one, but Bramwell L. J. pointed out that each man's character had been separately libelled. What is a libel on one is not necessarily a libel on another. In the case of Ali Serang v. Beadon (1885) I.L.R. 11 Calc. 524 thirteen persons who had been committed to jail for the same offence, and apparently under one warrant, and who were improperly detained in jail after their term of imprisonment had expired, sued the Superintendent of the Jail for damages. It was held that they could not join in one suit, and the plaint was ordered to be taken off the file. In this connection the case of Varajlal Bhaishanker v. Ramdat Harikrishna

(1901) I.L.R. 26 Bom. 259 is in point. I do not, however, propose to discuss it or the other cases in detail. I am clearly of opinion that there has been a misjoinder of plaintiffs and of causes of action, and that the suit as framed cannot possibly proceed.

4. I have then to consider whether the suit must of necessity be dismissed in toto, or whether the plaintiff may be given an opportunity to elect which one of their number should proceed with his case on the plaint as filed; the plaint being of course amended by striking out the other plaintiffs and so much of the statement of claim as refers to them. No doubt in the case of P.C. Co. v. Tsune Kijima [1895] A.C. 661 the suit was dismissed. On the other hand in Smurthwaite v. Hannay [1894] A.C. 494 and in Sandes v. Wildsmith [1898] 1. Q.B. 771 the plaintiffs were put to their election. Turning to the Indian cases, in Ali Serang v. Beadon (1885) I.L.R 11 Calc. 524, Wilson J. ordered the plaint to be taken off the file. There, however, that order was undoubtedly the appropriate order to make as the case had proceeded no further than the filing of the plaint, and there were other circumstances which indicate that the suit could not conveniently have been continued by one plaintiff in the High Court. In the case of Varajlal Bhaishanker v. Ramdat Harikrishna (1901) I.L.R. 26 Bom. 259 the plaintiffs were put to their election. I can find nothing in the Code of Civil Procedure or our Rules which fetters the discretion of the Court in this matter or prohibits either course. The only restriction upon an amendment of the plaint is that imposed by Section 53, viz., that a suit of one character may not be converted into a suit of another and inconsistent character. But here there will be no change in the character of the suit. The complaint of the defendants is that the plaintiffs have improperly combined in one suit what are really or should be six separate suits. The result of the amendment will be to strike out five plaintiffs with their claims leaving the remaining plaintiff to proceed with this identical suit so far as it relates to himself. It was argued that the present claim being for a lump sum of Rs. 20,000 for all the plaintiffs, the character of the suit would be changed by one plaintiff claiming the whole or part of the sum This is, however, merely a question of the relief to be granted, and an alteration in that respect would not alter the character of the suit: see Kasinath Das v. Sadasiv Patnaik (1893) I.L.R. 20 Calc. 805. I, therefore, order that the plaintiffs, if so advised, do elect which one of them shall proceed with the

present suit; and that after such election, if made, the plaint be amended by striking out the other plaintiffs and making other consequential alterations. The plaintiffs must pay to the defendants their costs of the suit incurred up to the present time to be calculated on scale 2.

5. The election and amendments must be made within 15 days from this date.

6. In the event of their being so made the defendants will be at liberty to amend their written statements to meet the case of the particular plaintiff who is to proceed with the suit.

7. If the election and amendment be not made within the time prescribed, the suit will stand dismissed with costs to be calculated on scale 2.