

Krishna Chandra Kabiraj and ors. Vs. Sankarsan Kabiraj and ors.

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Court : Kolkata

Decided On : Aug-26-1949

Reported in : AIR1950Cal128

Judge : R.P. Mookerjee, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 2, Rule 3

Appeal No. : A.F.A.D. No. 1966 of 1945

Appellant : Krishna Chandra Kabiraj and ors.

Respondent : Sankarsan Kabiraj and ors.

Advocate for Def. : Anukul Chandra Dutta, ;Lala Hemanta Kumar and ;Phanindra Nath De, Advs.

Advocate for Pet/Ap. : Girija Prasanna Sanyal and ;Prafulla Kumar Chatterjee (Jr.), Advs.

Judgement :

R.P. Mookerjee, J.

1. This appeal has to be allowed on the short ground that the suit is bad for misjoinder of the parties and of causes of action. This objection was raised by the defence in Courts below,

2. The plaintiffs are co-sharer landlords and they filed the present suit against a large number of defendants who may be grouped under the following heads : defendants 1 to 16 were their co-sharers; Nos. 17 and 18 were two lawyers of the estate; Nos. 19 to 25 were officers, tahsildars, gomosthas and other employees of the estate ; No. 26 is alleged to have intermeddled with the property as on behalf of defendant 1; and Nos. 27 to 38 were other proprietors of different estates. The claim was one for accounts against all these persons.

3. A reading of the plaint itself would at once show that the causes of action were different not only for the different groups but even for different persons within the same group in some cases. It is impossible to allow the plaintiffs to bring such a suit merely because the claims against the different parties are in respect of the same property. It is not the case of the plaintiffs that all these defendants were by any one transaction made jointly and severally responsible for rendering accounts. The plaintiffs must elect against which of the defendants they want to proceed and specifically state in the plaint as to the common cause of action giving rise to their claim against such defendants. If, for instance, they want to proceed against the co-sharers, or some of them for having been placed in the management of the estate, the lawyers to whom separate payments had been made on definite accounts as alleged in the plaint, the suit is not maintainable against the latter. As against the tahsildars and other officers, if there is a separate engagement or kabuliyat with any one or more of those, then a suit for accounts so far as those officers are concerned must be separated according to the arrangement made between the plaintiffs and particular officers. This should be the principle for determining whether the suit as framed is maintainable in the present form or not. Prima facie, the suit is bad for misjoinder of parties and causas of action. The plaintiffs should have taken the earliest opportunity of making the necessary amendments and for giving up such of the parties as they wanted to, so that the suit might have been heard on the merits. Unfortunately, both the Courts below misdirected themselves in coming to a conclusion that the suit as framed is maintainable.

4. The judgments and decrees of the Courts below are accordingly set aside and the case is remitted to the trial Court for giving an opportunity to the plaintiffs to

amend the plaint and to elect against which of the defendants they would proceed to trial. After such a prayer is made, the defendants will have the opportunity to file additional written statements. In the interest of the parties it will be desirable to raise a preliminary issue at that stage for deciding whether the suit as then framed after amendment is maintainable or not. The parties ought not to be asked to spend further money in this litigation before deciding this preliminary question.

5. As already stated, the plaintiffs had not taken the necessary steps at the earliest possible opportunity; they must be put to terms for having an opportunity of amending the plaint. The plaintiffs should within 15 days of the re-opening of the Court after the next Pujah Vacation deposit in the trial Court the entire costs of all the three Courts, namely, the Munsif, the District Judge and this Court, to the credit of the contesting defendants and only after such deposit is made that an application by the plaintiffs for amendment of the plaint will be entertained. If the deposit is not made within the date mentioned this appeal will stand allowed and the plaintiffs' suit dismissed with costs to the appearing respondents. If the deposit is made, the defendants will be entitled to withdraw the same and to retain it irrespective of the result of the suit.

6. In view of the order passed allowing the appeal and remitting the case to the trial Court on the condition mentioned, it is not necessary to pass any order on the application filed by the defendant Baidyanath Banerjee on 25th August 1949, for transposition to the position of an appellant in this appeal.