

Present: Pereira J. and Ennis J.

1914.

KALUHAMY *et al.* v. APPUHAMY *et al.*

380—D. C. Tangalla, 1,347.

One action in respect of two or more distinct parcels of land—Civil Procedure Code, s. 36.

One case may be maintained by the same plaintiff against the same defendant in respect of two or more separate and distinct parcels of land.

If in such a case the Court finds it inconvenient to dispose of all the causes of action together, it should not dismiss the plaintiff's claim, but make order for separate trials in terms of section 36 of the Civil Procedure Code.

**A**CTION for declaration of title. The facts appear from the following judgment of the District Judge (F. D. Peries, Esqr.):—

Upon the second issue raised in this case, it appears to me that the plaintiffs' case as at present instituted cannot be maintained. All the documents filed by the plaintiff, including the list of lands advertised for sale or settlement by the Crown, show very clearly that the two lands, Julgahawatta and Dunwattupittaniya, have throughout been treated by both Babehamy and Matheshamy, and also by the Crown, as two distinct and separate lands, although lying adjoining each other. The plaintiffs' own witnesses speak of them as two separate lands, although they have been dealt with by Babehamy and Matheshamy in one deed. Babehamy originally purchased them from different owners, and has always in his transactions treated them as two lands, giving them separate numbers and separate boundaries in each one of the documents produced. It is therefore not possible in the present suit, merely because the plaintiff claims them upon one document (P 9), to treat them as one land. Even after the matter was raised in issue by the defendants' proctor the plaintiff has not applied to Court, electing to proceed to trial, confining his case to either of the lands. In the circumstances, I can only answer the second issue in the affirmative. This finding prevents the necessity for proceeding to answer the other issues raised in the case . . . . .

The second issue was as follows: Is there a misjoinder of causes of action ?

*Bartholomeusz*, for plaintiff, appellant.

*L. H. de Alwis*, for defendant, respondent.

*Cur. adv. vult.*

1914. November 17, 1914. PEREIRA J.—

*Kajshamy v.  
Appuhamy*

The District Judge in his judgment proceeds on the assumption that one case cannot be instituted by the same plaintiff against the same defendant in respect of two separate and distinct parcels of land. He is in error here. It has been suggested that he relies on section 35 of the Civil Procedure Code. If so, I need only say that what that section means is that in an action for the recovery of immovable property no other claim (that is to say, no further claim other than one in respect of immovable property) shall be made, except, &c. Under section 36 it is open to a plaintiff to unite in the same action several causes of action against the same defendant. Such a course may lead to embarrassing results; but the remedy is not the dismissal of the action, but it is that laid down in the second paragraph of section 36. The Court may either direct separate trials in the same action, or refer the plaintiff to a separate action in respect of one or more of the causes of action declared upon, and proceed in the action already before the Court to deal with the rest; that is, of course, if, in fact, all the causes of action cannot be conveniently disposed of together.

I would set aside the order appealed from with costs, and remit the case to the Court below for proceedings in due course.

ENNIS J.—I agree.

*Set aside.*

