

*Present:* The Hon. Mr. A. C. Lawrie, Acting Chief Justice, *July 31, 1901*  
and Mr. Justice Withers.

**IBRAHIM DIDI *et al.* v. ALLI DIDI**

*D. C., Galle, 5,031*

*Joinder of parties—Co-owners—Action against another co-owner for appropriating rents—Civil Procedure Code, ss. 11 and 12.*

Several co-owners joined in one action against another co-owner, who appropriated all the rents of the common property without accounting to the other co-owners for their respective shares.

*Held*, that the joinder of the co-owners in one action was not irregular.

WITHERS J.—To split this action would, I think, at once offend the code, convenience, and the Civil Law, which permits any number of persons having a common interest to join in one action.

*Van Langenberg*, for appellants.

*Sampayo*, for respondent.

July 31, 1901. LAWRIE A.C.J.—

I do not agree with the learned District Judge. The cause of action is that the defendant, one of several co-owners, has taken the whole rents and profits of a land of which the plaintiffs are owners, and that he has refused to pay to his co-owners their share of the rents.

In my opinion two or more co-owners may join in the same action against the wrongdoer, even though each of the plaintiffs has a different title to a share of the land—a title different in date, one may be earlier than the other; different in character, one may be by inheritance, the other by purchase; different in extent, one for a large, one for a small share.

Sections 11 and 12 of the Civil Procedure Code allow the owners to join in one action.

Set aside with costs. Sent for further proceedings.

WITHERS J.—

This is an appeal from an order deciding in effect that the plaintiffs cannot unite in this action against the defendant, and in my opinion the appeal is entitled to succeed. The two plaintiffs and the defendant are owners in common of certain immovable properties.

It is alleged that the defendant has given out these properties on lease, and has appropriated the rents without accounting to the plaintiffs for their respective shares. The first plaintiff acquired

*July 31, 1901* his interest in the common property a long time before the second plaintiff acquired his, and as his share is the larger of the two, and as the defendant began to deal with some of the common properties before the second plaintiff's interest accrued, the amount claimed by the first plaintiff is naturally much more than the amount claimed by the second plaintiff.

*Withers J.*  
*Ibrahim Didi*  
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It seems to me that sections 11 and 12 of the Civil Procedure Code apply to this case, and are in favour of the appellants. (Sections 11 and 12 are here quoted). The right to relief is no doubt separate, but it is surely in respect to the same cause of action.

The plaintiffs and the defendant have a community of interest in the rents and profits of the common property, and if the defendant, who has taken these rents and profits, withholds their due shares from his co-tenants, his act is one and the same cause of action.

To split this action would, I think, at once offend the code, convenience, and the Civil Law, which permits any number of persons having a common interest to join in one action.

*Appeal allowed.*

