

June 2, 1910

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice van Langenberg.

JAYAMAHA *et al.* v. SINGAPPU *et al.*

D. C., Chilaw, 3,669.

Joinder of plaintiffs, causes of action, and defendants—Civil Procedure Code, ss. 17 and 18.

Two plaintiffs, who claimed to be each entitled to two distinct lots, A and B, jointly brought an action for declaration of title and ejectment and damages against several defendants, of whom the ninth and tenth were alleged to be in possession of lot B, and the others, each of distinct lots of A. The defendants objected—

- (1) That there was a misjoinder of plaintiffs, as they were not owners in common of these lots.
- (2) That there was a misjoinder of defendants, in that the defendants were not jointly in possession of all the lots.
- (3) That there was a misjoinder of causes of action, as possession was taken of the lots at various times.

Held, that the first objection was sound, and that the second and third were not.

The Supreme Court remitted the case to the District Court, for it to deal with any application made to it to strike out one of the plaintiffs.

THE facts are set out in the judgments.

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Seneviratne (with him *Chitty*), for the defendants, appellants.

Bawa, Acting S.-G., for the respondents.

Cur. adv. vult.

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The plaintiffs set out in their plaint that the Crown, being entitled to the land called Paluwelagalamukalana, shown in plan No. 60,856, dated February 29, 1864, and in plan No. 1,117, dated October 2, 1903, both signed by the Surveyor-General, granted it on September 23, 1864, to Bastian Perera, whose successors in title transferred the northern portion of it on October 20, 1896, to the first plaintiff; that in 1901 the first plaintiff sold and conveyed about 6 acres of the said north portion to the ninth defendant, from whom it passed under a Fiscal's transfer to the second plaintiff. I will refer to the portion which they say is still vested in the first plaintiff as A, and to the portion which they say is vested in the second plaintiff (6 acres 3 roods and 12 perches) as B. They allege that the seventeen defendants are in unlawful possession of different parcels of A and B, all of them pleading title to the whole of A and B on an alleged sannas. And they claim a declaration of their title, and recovery of possession, and damages. They attach to the plaint a sketch showing that different defendants have been from different dates, and still are, in possession of separate pieces of A; thus, the first defendant has been in possession of about $\frac{1}{2}$ an acre since 1901, the second and other defendants in possession of another $\frac{1}{2}$ an acre since 1901, the fourth defendant in possession of another $\frac{1}{2}$ of an acre since 1904, and so on; and that B has been in possession of the fifth, ninth, and tenth defendants since 1906.

The defendants, except the fourth and ninth (who filed no answer), joined in an answer, in which they first said that, as a matter of law, the action is bad for misjoinder both of parties and of causes of action. They also denied the plaintiffs' title, and said that, by virtue of a royal sannas granted to his ancestors, one Thelenis Gamarala was the owner and in possession of the entirety of the land which the plaintiffs said was comprised in the Crown grant; that the heirs of Thelenis Gamarala (of whom several of the defendants are some) have acquired a prescriptive title to the portions of which the plaint says they are in unlawful possession; and that the fifth defendant, to whom Gamarala in 1886 granted B to be planted, took possession under that grant, and has since 1886 been in the undisturbed and uninterrupted possession of B by a title adverse to and independent of the plaintiffs.

Several issues were suggested, but by consent of the parties (except the fourth and ninth defendants, who did not appear) the Court tried first the issues as to misjoinder, and as to whether the

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sannas set up by the defendants was genuine. The Court held that there was no misjoinder, and that the sannas was a forgery. An appeal by the defendants was dismissed as being out of time, but this Court afterwards gave special leave to appeal, notwithstanding the lapse of time, and this is the appeal. The only question which has been argued before us is whether there was not a misjoinder either of parties or of causes of action or of both.

The first plaintiff's cause of action is for a trespass on portions of his land A, and he has nothing to do with B. The second plaintiff's is for a trespass on his land B, and he has nothing to do with A. It is true that all the defendants who filed answer claim ultimately from the sannas; but the claims of the plaintiffs are for distinct causes of action, and ought not to have been joined. See section 17 of the Civil Procedure Code. Their counsel says that he is willing that the second plaintiff and his claim should be struck out. But there was no application by either party to strike him out; and section 18 does not empower the District Court to do so without an application; and I think that we have no power to do it now.

We have heard arguments on the question whether, supposing the second plaintiff and his claim to be struck out, there is not a misjoinder of the claims of the first plaintiff against those defendants whom he alleges to be in possession of separate portions of A. This affects all the defendants, except the ninth and tenth (who are only alleged to be in possession of B). The first plaintiff claims that he is the owner of the whole of A, and that certain of the defendants are in wrongful possession of portions of it of the extent of $11\frac{1}{2}$ acres; these defendants say that the whole of A belonged to Thelenis Gamarala, and that his heirs, of whom they say the first, third, sixth, seventh, and sixteenth are some, have acquired a prescriptive title to all those $11\frac{1}{2}$ acres; the other defendants, other than those five who are said to be the heirs of Thelenis, do not, so far as I can see, set up any claim of right for themselves. In my opinion there are not separate causes of action by the first plaintiff against the defendants whom he alleges to be trespassers on A. He claims the whole of A, one piece of land, which he says belongs to him under one title; and he alleges that the defendants are in wrongful possession of distinct portions of it. Several cases more or less similar are reported in the *Indian Law Reports*, and perhaps they are not all reconcilable. It is said, on the one hand, that where defendants are in possession of distinct portions of the land and claim it under distinct titles, and there is no collusion amongst them, the plaintiff's cause of action against each of them is distinct; and so it was held in *Ram Narain Dat v. Annoda P. Joshi*.¹ On the other hand, it is said that the plaintiff's cause of action against all the defendants is one, viz., to recover his land; that the defendants may set up what defences they please, but that the plaintiff is

¹ (1887) 14 Cal. 681.

entitled to recover possession of his land as a whole, and not in fragments. This last was the view taken in *Ishan Chunder Mazra v. Mondol*¹ and in *Nundo K. Nasker v. Banmali Gazan*.²

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I would send the case back to the District Court with a declaration that there is a misjoinder of plaintiffs, and with directions that, if an application is made to the Judge to strike out one of the plaintiffs, he shall deal with it on such terms as to costs, amendment of pleadings if necessary, and otherwise, as he thinks fit, and if he accedes to it, he shall proceed with the trial of the other issues; and that if no such application is made, or if it is made and he does not grant it, he should dismiss the action. The appellants should have their costs of this appeal. The costs of the other appeal were ordered to remain, and must remain as costs in the cause.

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VAN LANGENBERG A.J.—

In this case in the plaint it was averred that the first plaintiff was entitled to the land marked lot A in the plan, and the second plaintiff to the lot B. The cause of action as set out in the 15th paragraph of the plaint is as follows: "The defendants, who have no manner of right to the said portion (i.e., lots A and B), are in the forcible and unlawful possession of different parcels of the said portion, as shown in the annexed sketch marked X, all of them pleading title to the whole of the said portion on an alleged sannas, to the plaintiffs' damage of the sum of Rs. 400." In the sketch referred to in that paragraph the plaintiffs show the various blocks possessed by the defendants, and state the dates when the defendants entered, thus:—

No. 1 is 6 acres 3 roods and 12 perches in extent, and is in the possession of the fifth, ninth, and tenth defendants since February 23, 1906.

No. 2 is about 2 acres in extent, and is in the possession of the fifth, eighth, and seventh defendants since 1902.

No. 3 is about $\frac{1}{2}$ an acre in extent, and is in the possession of the first defendant since 1901.

No. 4 is about $\frac{1}{2}$ an acre in extent, and is in the possession of the second, eleventh, twelfth, fifteenth, and sixteenth defendants since 1901.

No. 5 is about $\frac{1}{2}$ an acre in extent, and is in the possession of the sixth and seventh defendants since 1900.

No. 6 is about $\frac{1}{4}$ of an acre in extent, and is in the possession of the third defendant since 1901.

No. 7 is about $\frac{1}{4}$ of an acre in extent, and is in the possession of the fourth defendant since 1904.

No. 8 is about $\frac{1}{4}$ of an acre in extent, and is in the possession of the fourteenth defendant since 1908.

¹ (1897) 24 Cal. 331

² (1902) 29 Cal. 871.

June 2, 1910 No. 9 is about $\frac{1}{2}$ of an acre in extent, and is in the possession of the thirteenth defendant since July, 1906.

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The plaintiffs prayed that they be declared entitled to the parcels of land shown in the sketch, and that the defendants be ejected.

Objection was taken by the defendants to the plaint on these grounds: first, that there was a misjoinder of plaintiffs, as they were not owners in common of these lots; second, that there was a misjoinder of defendants, in that the defendants were not jointly in possession of all the lots; third, that there was a misjoinder of causes of action, as possession was taken of the lots at various times.

The first issue tried ran as follows: "Is this action bad for the misjoinder of parties and causes of action?"

The learned District Judge held in favour of the plaintiffs, and the defendants have appealed.

I think the first objection a good one, and that the plaintiffs cannot sue jointly in this action.

Mr. Bawa intimated that in the event of our so holding, he would move to strike out the name of the second plaintiff, and I would give him an opportunity of taking steps to so amend his plaint.

I am not prepared to uphold the second and third objections. The first plaintiff's grievance is that the defendants are preventing him from possessing several portions of this land, to which they claim title on a sannas; and this constitutes, it seems to me, one cause of action, and the fact that as among themselves the lots are separately possessed does not, I think, make any difference.

I agree to the order proposed by the Chief Justice.

Case sent back.

