June 14, 1911

Present : Wood Renton J.

CAROLIS APPU *et al.* *v.* DIONIS APPU *et al.*

174—*C. R. Avissawella*, 6,682.

Civil Procedure Code, ss. 18 and 189—Power of Court to set aside its own order—Possessory action—Order to add lessors to warrant and defend plaintiffs' title—Subsequent order to strike them out.

Plaintiffs, who were lessees, brought a possessory action against the defendants. The defendants pleaded title. On a motion of the plaintiffs the lessors were made parties for the purpose of warranting and defending their title. At a later stage on the application of the plaintiffs, the Commissioner struck out the names of the added defendants. It was contended on appeal that the Commissioner had no power to set aside his first order.

Held, that he had the power to make the order under section 18 of the Civil Procedure Code, as the lessors were improperly joined.

THE facts are set out in the judgment of Wood Renton J.

F. H. B. Koch, for appellants.

Morgan, for the respondents.

June 14, 1911. WOOD RENTON J.—

The plaintiffs-respondents in this case, alleging that they were lessees under Don Peduru and Don Juse on a deed dated July 31, 1906, of the land described in the plaint, and that they had been in possession of the leased premises till September 17, 1909, sued the defendants-appellants, who, they said, had dispossessed them on that date, to recover a sum of Rs. 80 a year, with further damages, and to eject the defendants-appellants, and to recover possession. The appellants in thier answer merely said that they were not aware of the truth of the respondents' allegation as to their title, and put them to the proof of it. They admitted that they had entered on the land and plucked nuts, but denied that the entry was forcible and unlawful, or that the respondents had sustained any damage in consequence of it. There has been, in the progress of this case, a good deal of confusion, and I think that the ball was first set rolling by the appellants themselves. In the 4th paragraph of their answer they set up title to an undivided one-fourth of the land by

inheritance, and alleged that they had plucked nuts from that land in respect of their share. The respondents' action was a possessory one, and the appellants had no right to raise in their defence to that action a plea of title at all. It ultimately produced its natural result in a motion on behalf of the respondents, at the suggestion of the learned Commissioner of Requests, that the lessors should be made parties for the purpose of warranting and defending their title. The lessors were called upon to show cause why they should not be added. They had no cause to show, and they were in fact brought in as added parties. At a later stage the learned Commissioner, on a formal application made to him for that purpose on behalf of the respondents under section 18 of the Civil Procedure Code, struck out the names of the added defendants, and proceeded to hear the case. He ultimately gave judgment in favour of the plaintiffs-respondents. Against that judgment the present appeal is brought.

The main point argued by Mr. Koch in support of it was that, as the added parties had been brought into the case by an order of the Judge himself, it was not competent for the Judge at a later stage to set that order aside, and he called my attention to various decisions of this Court in which the rule has been laid down that a Judge has no inherent power to set aside an order made by him, except under the conditions recognized in section 189 of the Civil Procedure Code. I do not think that the principle of those decisions is applicable to the present case. Section 18 of the Civil Procedure Code expressly empowers the Court " on or before the hearing, upon the application of either party, and on such terms as the Court thinks just," to order that the name of any party, whether as plaintiff or defendant, " improperly joined," be struck out. There can be no doubt but that the added parties were in this case improperly joined, for at the point of time at which they were added the respondents had no cause of action against them ; and that being so, I think that section 18 of the Code itself empowered the Judge to strike out the names. It was frankly admitted by Mr. Koch that his real grievance with the order was, not that the added parties had been struck out, but that, in consequence of their having been struck out, he was no longer in a position to prove his plea of title in the possessory action. As I have shown, it was the respondents themselves who, in the first instance, gave rise to the confusion that has arisen in this case by raising a plea of title improperly, and I do not think that they have any claim to the indulgence of the Court in regard to it.

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I dismiss the appeal with costs.

Appeal dismissed.