

*Special Appeal No. 299 of 1869.*

1870.  
March 31.

SAYAD SAMSUDDI'N PIRJA'DE ..... *Appellant.*  
GANPATRA'V JAGANNA'TH *et al.* ..... *Respondents.*

*Procedure—Misjoinder of Causes of Action.*

A suit was brought against six defendants, the cause of action against five of them being unconnected with the cause of action against the sixth.

The Assistant Judge, in whose court the suit was brought, tried one of the causes of action, over which he had jurisdiction, but refused to try the other, over which he had no jurisdiction. In appeal, the District Judge refused to enter into the merits of either, on the ground of the misjoinder of the causes of action.

*Held* that the District Judge was bound to enter into the merits of the claim, over which the court of first instance had jurisdiction, it not being affected by the error in the misjoinder of the two claims.

THIS was a Special Appeal from the decision of A. Bosanquet, Judge of the District of Tháná, in Appeal Suit No. 512 of 1868, amending the decree of A. Lyon, Assistant Judge at Tháná, in Original Suit No. 63 of 1868.

The special appeal was heard on the 15th of September 1869, before WARDEN and LLOYD, JJ.

*Shántárám Náráyañ* for the appellant.

*Dhirajlál Mathurádás* for the respondents.

*Cur. adv. vult.*

The facts appear from the following judgment, delivered on the 31st of March 1870 :—

Sayad Samsuddín brought this action to recover the mesne profits of a house for a certain period, against six defendants—the defendants Nos. 1 to 5 having formally and without just cause disputed his title, and defendant No. 6, who is the Názár of the Tháná District Court, having, it was alleged, illegally exercised his authority to the plaintiff's prejudice.

The case was tried by the Assistant Judge of Tháná, who found that the Názár had not acted contrary to law, and,

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therefore, threw out the claim against him. The Assistant Judge also found that the cause of action against the other defendants was distinct from that against the Názar, and should not have been joined together in one suit.

On appeal, the District Judge, considering the action not to be maintainable in the form in which it had been brought, did not enter into its merits.

We are of opinion that the Assistant Judge was right in holding that there was no connection between the cause of action against the Názar and that against the other defendants, and also in declining to enter into the merits of the claim against the five defendants over whom he had no jurisdiction. It also appears to us that there was nothing incorrect in his proceeding to inquire into that portion of the claim which had been properly instituted in his court, and hence that the Judge, when the case came before him in appeal, was bound to enter into the merits of the claim against the Názar, as the error in the misjoinder of the two claims originally would not justify him in dismissing that portion of the claim which had been adjudicated on, merely by reason of such error. We must, therefore, remand the case to the District Court, in order that the appeal between the appellant and the respondent, the Názar, may be tried on its merits.

*Decree amended.*