

## [APPELLATE CIVIL JURISDICTION.]

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July 9.*Special Appeal No. 126 of 1872.*

PRA'GJI RUDARJI.....*Appellant.*  
 ENDARJI BHIMBHAI .....*Respondent.*

*Civ. Proc. Code, Sec. 7—Joinder of different causes of action.*

In 1869, P. brought a suit against his grandmother K. and another person, for possession of a piece of land which P. alleged had descended to him from his grandfather. In 1870, P. sued the said K. and one E. for some trees which he also claimed by right of inheritance from his grandfather.

*Held* that the causes of action in the two suits by P. were different, viz., unlawful alienations by K. of the respective properties, the subject matter of the different suits.

Sec. 7, Civ. Proc. Code requires that every suit should include the whole of the claim, arising from the same cause of action, but although the Civil Procedure allows of claims arising from different causes of action being included in the same plaint, there is no provision of law which makes it obligatory on the plaintiff to do so.

THIS was a special appeal from the decision of W. H. Newnham, Acting District Judge of Súrat, in Appeal No. 177 of 1871, reversing the decree of the Subordinate Judge of Bulsar.

Prágji brought this suit against Eндarji and Kási, Prágji's grandmother, to recover possession of 40 trees. Prágji claimed the trees as having been inherited by him from his grandfather. Prágji alleged that the trees were in the possession of Kási.

Eндarji stated that he purchased the trees from Kási and contended that the claim was barred by the law of limitation and by Section 7 of the Civil Procedure Code.

Kási admitted the sale alleged by Prágji.

The Subordinate Judge awarded the plaintiff's claim, holding that neither the law of limitation nor Section 7 of the Civil Procedure Code barred the suit.

On appeal, the District Judge held that the claim was barred by Section 7 of Act VIII. of 1859, and reversed the

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decree of the Court of first instance. The District Judge gave the following reasons for coming to this conclusion :—

“ Secondly, it is barred by Section 7. I find that in 1869 the plaintiff sued Kási and the heir of one Bhulá for a part of the land that descended from his grandfather, and the contention is that he should have sued for the whole of such property then, and cannot now sue for another portion. The Subordinate Judge has, however, held the claim not barred on the ground that the parties were not identical in the two suits. In *Vithu et al v. N. Dabhulkar (a)* the plaintiff brought separate suits against alienees of joint property including the co-parcener in each. The Court held that as he had one cause of action against the co-parcener, he was wrong in splitting up that claim, but declined to interfere with the decrees of the Lower Courts, because these suits were brought simultaneously. In the present instance, they are successive; and the reason of the present defendants not having been both parties in the former suit is that the plaintiff did not, as he should have done, include Eandarji in the former suit, and claim this portion of the family property from him as both co-parcener and alienee. The sale to him by Kási had taken place in 1866 before the former suit, and this claim should have been made in the former suit: *Abhiram Das v. Sriram Das (b)*.

“ In the present case Kási occupies the position of Pándurang in Vithu's case above quoted. I find that under that ruling the plaintiff should have either sued to establish his right to the *whole* property descended from his grandfather either against Kási or Kási and Eandarji as a co-parcener and subsequently sued the alienees, or should have brought a general action against the co-parceners and alienees. Not having done so, he has split the cause of action, and as the suits were not simultaneous, the reason for affirming the decree does not exist. I consider, therefore, that the claim must be rejected as barred by Section 7.”

(a) 5 Bom. H. C. Rep. A. C. J. 30. (b) 3 Beng. Law. Rep. A. C. 421.

The appeal was argued before Sargent, Acting C.J., and Melvill, J., on the 9th July 1872.

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*Shivshankar Govindrám* for the appellant:—The Judge was wrong in holding that the claim was barred by Section 7 of Act VIII. of 1859. As the former and present suits were brought on two distinct causes of action, the provisions of that section do not apply to the present suit. He cited *Kákáji Ránoji v. Bápuji Madharráv (c)*, *Mothoor Mohun Mundul and others v. Khemunkurec Dossee and others (d)*.

*Nánábhái Haridás* for the respondent.

PER CURIAM:—The causes of action were different in this and the preceding suits by the plaintiff, namely, the unlawful alienations by Káshi of the different properties, the subject matter of the different suits.

Section 7 requires that every suit should include the whole of the claim arising out of the same cause of action, but although the Civil Procedure allows of claims arising out of different causes of action being included in the same plaint, there is no section which makes it obligatory on the plaintiff to do so.

Decree reversed and claim allowed with costs on respondent throughout.

*Decree reversed with costs.*

(c) 8 Bom. II. C. Rep. A. C. J. 205.

(d) 5 Cale. W. Rep. Civ. R. 182