

1882

VASUDEV
BHAT
v.
NARAYAN
DAJI DAMLE.

The decree of the Assistant Judge must, therefore, be varied by reversing the decree of the Subordinate Judge, except with regard to the house and *thikan* Gharvadi, referred to in exhibit 4, of which the defendant must not disturb plaintiff's possession. Plaintiff to pay defendant his costs of appeal in this Court.

Decree varied.

NOTE.—The decision in the above case was followed in *Bhikaji Sadashiv v. Bhagirthibai* (Second Appeal No. 11 of 1882) decided by SARGENT, C. J., and KEMBALL, J., on the 19th December, 1882 (see Printed Judgments for 1882, page 410.)

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.

UMED DHOLCHAND, PLAINTIFF, v. PIR SAHEB JIVA MIYA
AND OTHERS, DEFENDANTS.*

1883
January 16.

Cause of action—Multiplicity of suits—Dividing cause of action—The Code of Civil Procedure, XIV of 1882, Sec. 43—Presidency Small Cause Court Act, IX of 1850, Sec. 34.

When money is due on two or more bonds at the time of the institution of a suit, and the bonds appear to have been originally passed in respect of one claim, it is not incumbent upon the plaintiff to sue upon both bonds in one action. There is nothing in section 43 of the Code of Civil Procedure which would justify the Court in going behind the bonds to consider the circumstances out of which they sprung, albeit those circumstances might themselves at the time have constituted a cause of action. There is no provision in the Mofussil Small Cause Courts Act (XI of 1864), similar to section 34 of the Presidency Small Cause Court Act IX of 1850, which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency.

THIS was a reference from L. N. Banaji, Judge of the Court of Small Causes at Ahmedabad, under section 617 of the Code of Civil Procedure. He stated the case thus :—

“1. There are two suits filed in this Court between the same parties.

“2. The plaintiff filed the two suits on two bonds, both respectively dated Maha Sud 6th, 1934, corresponding with the 8th February, 1878. From the language of the bonds it appears that they were passed by the defendants in respect of the principal and interest due on a previous bond for Rs. 299, bearing

* Civil Reference, No. 66 of 1882.

date Maha Vad 3rd, 1931 (23rd February, 1875). The bond in the first suit for Rs. 300 appears to be for the principal amount of the previous bond of 1931, and the one in the second for Rs. 200 appears to be for interest which had then accrued due.

"3. Decrees were passed *ex parte* against the defendants in both suits on the 8th June, 1881. On application of the third defendant, Goolamali Pir Saheb, these decrees, as against him only, were on the 21st July, 1882, ordered to be set aside, as it appeared that he had not been duly served with the summons. The order to set aside the *ex-parte* decrees as against the third defendant, Goolamali, only was made in conformity with the decision of the Calcutta High Court in the cases reported in 3 Bengal Law Reports at p. 7 and VIII Suth. W. R., 260.

"4. On the re-hearing of the suits as against the defendant Goolamali, his pleaders, amongst other pleas, urged that the plaintiff had split the cause of action in having brought two suits instead of one. And in support of their contention they referred to sections 42 and 43 of the Code of Civil Procedure, and cited the following cases:—*Grimlay v. Aylkroyd* (1); *Blackwell v. Sumar Ahmed* (2); *Cussum Jooma v. Lilludhar Kissowjee* (3); *Mackintosh v. Gill* (4). A judgment of Mr. Millett First Judge of the Calcutta Small Cause Court, in the case of *T. F. Brown v. F. W. Lakin* was also quoted. That judgment appears to have been published in the *Calcutta Englishman* for 23rd June, 1879, and also at page 481 of the *Indian Law Journal*, Vol. I,—a Bombay publication. I would also refer to pages 189-191 of Mr. Pitt Lewis' work on *County Courts' Practice*, where a summary of the English decisions on this point is given. For the plaintiff it is contended that it has been the practice for parties to bring separate suits on each separate bond, and that the sections of the Code and the authorities cited by the other side are inapplicable, as each bond was a separate contract, and created a separate and distinct cause of action.

"5. The questions for the opinion and decision of the Honourable the High Court are—

(1) 17 L. J., 157.

(2) 6 Bom. H. C. Rep., 88.

(3) I. L. R., 2 Bom., 510.

(4) 20 Suth. W. R., 358.

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UMED
DHOLCHAND
v.
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UMED
DHOLCHAND
2.
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“(a) Whether, when money is due on two or more bonds at the time of the institution of the suit, and which appear to have been originally passed in respect of one claim, it is incumbent upon the plaintiff to unite the claims and sue for them in one action, or optional with him to sue separately on each separate bond ?

“(b) Whether, if the Honourable the Judges should be of opinion that a plaintiff is precluded from bringing separate suits on such bonds, both the suits above mentioned or only the latter one should stand dismissed against the third defendant, Goolamali.

“6. There can be no doubt that at the date of the execution of the two bonds under question the plaintiff had but one cause of action. And the mere fact of his getting his debtors to pass two documents instead of one at the time of the making up of the accounts, does not, in my opinion, create two separate and distinct causes of action. The total amount of the two bonds—Rs. 500—with interest would have exceeded the jurisdiction of this Court. And if the plaintiff had chosen not to abandon the account of his interest, he would have been obliged to bring one suit for both demands in another Court. And applying the principle laid down in the English cases, I am of opinion that, as the plaintiff could have joined the two cases in one action, he was bound to do so.

“7. As regards the second question, having regard to the two Bombay cases above cited, I am of opinion that both suits must be dismissed as against the third defendant, Goolamali.”

There was no appearance on behalf of any of the parties.

SARGENT, C. J.—The question referred to us by the Judge of the Small Cause Court of Ahmedabad is, whether it was incumbent on the plaintiff to unite the claims on the two bonds in the same suit. Section 43 of the Civil Procedure Code requires that ‘every suit shall include the whole of the claim which the plaintiff is entitled to in respect of the same cause of action.’ There can be no doubt that the two bonds and the default in payment of them constitute, in any view of the expression “cause of action”, two distinct causes of action, and there is nothing, we think, in the language of the section (which would appear to have been mainly designed to discourage multiplicity of suit)

which would justify the Court in going behind the bonds to consider the circumstances out of which they sprung, albeit those circumstances might themselves at the time have constituted a cause of action. A case of two promissory notes passed under similar circumstances to the present bond, and decided by the Small Cause Court of Calcutta against the plaintiff, has been referred to; but it is to be remarked that the language of the above section is very different from that of section 34 of the Presidency Small Cause Court Act of 1850 on which the Court doubtless acted, and which is not found in the Mofussil Small Cause Courts' Act. That section forbids a "plaintiff's dividing any cause of action for the sake of bringing two or more suits in those Courts," and might possibly enable the Court to regard what was done in that case at the time of passing the notes as a violation of that section. The question must, therefore, be answered in the negative.

1883

UMED
DHOLCHAND
v.
PIR SAEED
JIVA MIYA.

(26)

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Melvill, and
Mr. Justice Kembell.*

MAGANDAS KHEMCHAND, PLAINTIFF, v. RAMCHANDRA
HIRAJI, DEFENDANT.*

1883

January 16.

*Stamp—Loan of grain in consideration of repaying a larger measure of grain—
Bond—Agreement—Act I of 1879, Sec. 3 (4) (b).*

An attested instrument, in which the obligor states that he borrowed a certain quantity of grain from the obligee and agreed to repay it at a future time in greater quantity, is a bond within the meaning of section 3 (4) (b) of Act I of 1879, although the instrument is silent as to the money value of the grain. Where the value of such an instrument was ascertained to be less than Rs. 10, it was held to be properly stamped as a bond with a stamp of annas 2.

THIS was a reference, under section 49 of the Stamp Act I of 1879, by Rao Saheb K. B. Marathé, Subordinate Judge of Amalner.

"The defendant executed the following instrument in favour of the plaintiff:—

* Civil Reference, No. 63 of 1882.