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only just and reasonable ; but it would be hardly just and reasonable to hold that a party who discovered fresh evidence, perhaps only a day after he had presented his second appeal, should not be allowed to forego his second appeal, and apply for a review to the only Court which could consider his new evidence.

We have had some doubts whether the evidence, which the appellant in this case claims to have discovered, is of sufficient weight to justify us in giving the appellant an opportunity of applying for a review. But, on the whole, we think that he is entitled to the benefit of the District Court's opinion upon this point.

We, accordingly, permit the withdrawal of this appeal. The appellant must pay the respondents' costs of appeal.

Appeal withdrawn.

APPELLATE CIVIL.

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

KACHAR BAOJ VAIJA AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* BAI RATHORE, WIDOW OF KACHAR RAJA JETHA, AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1883 *February* 22.

Practice—Misjoinder of causes of action—Civil Procedure Code Act X of 1877, *Sec.* 45.

The plaintiffs sued for a declaration that the several alienations made by defendant No. 1 (a Hindu widow) to the other defendants were void, and that they, the plaintiffs, were entitled to the several properties after her death ; also for an injunction, restraining her from making similar unlawful alienations in the future.

Held, that the suit as framed was not maintainable, inasmuch as it included within it several distinct causes of action which, under section 45 of Act X of 1877, could not be joined together in the same suit.

The course which should be adopted by a Court or Judge, where there has been such a misjoinder of causes of action, discussed.

THIS was an appeal from the decision of Mukundrai Manirai, First Class Subordinate Judge of Ahmedabad, in Original Suit No. 1081 of 1878.

The plaintiffs instituted this suit, alleging that Bai Rathore (defendant No. 1) was the widow of one Raja Jetha, deceased that she had alienated various portions of her husband's immo-

* First Appeal, No. 24 of 1882.

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veable property to the several remaining defendants which she, as a Hindu widow, had no right to do. They, therefore, prayed for a declaration that the several alienations were null and void as against them (the plaintiffs), and that they were entitled to the said properties in the event of her remarriage or death. They also prayed for an injunction, prohibiting her from making any similar unlawful alienations in the future.

The defendants answered (*inter alia*) that the suit was not maintainable, inasmuch as it united several distinct causes of action against several defendants.

The Subordinate Judge dismissed the suit under section 45 of Act X of 1877.

The plaintiffs appealed to the High Court.

Shantaram Narayan (with him *S. V. Bhandarkar*) for the appellants.—The lower Court was wrong in holding that there was a joinder of several distinct causes of action. The suit was maintainable under section 42 of the Specific Relief Act: see illustration (*e*). The learned pleader cited *Hurro Monee Dossea* v. *Onookool Chunder*(1).

Gokuldas Kandas, for respondent No. 1, submitted that the decision was in accordance with the provisions of section 45 of Act X of 1877. The learned pleader relied upon *Rajah Ram Tewary* v. *Luchman Pershad* (2) and *Imrit Nath Jha* v. *Roy Dhunpat Sing Bahadur* (3).

SARGENT, C. J.—We think the Subordinate Judge was right in holding that the claim to have the several alienations by the widow Rathore mentioned in the plaint declared void arises out of several distinct causes of action against the several defendants who were the alienees of the particular properties, the subject of those alienations, which causes of action could not, therefore, be properly united in the same suit, having regard to the provisions of section 45 of the Code of Civil Procedure. The Code does not state what course the Judge ought to pursue where there has been a misjoinder of causes of action. In similar cases un-

(1) 8 Calc. W. R. Civ. Rul., 461. (2) 8 Calc. W. R. Civ. Rul., 15.
(3) 9 Beng. L. R., 241.

der sections 8 and 9 of the Code of 1859, which are virtually the same as section 45 of the present Code in a less expanded form, it was said by Peacock, C. J., in *Rajah Ram Tewary* v. *Lachman Pershad* (1) that Judges ought to reject the plaint. If this be not done, and the objection be taken by the defendants in their written statement, the Judge ought to raise an issue and decide it. However, it was said by Sir R. Couch, C. J., in *Imrit Nath Jha* v. *Roy Dhunput Sing Bahadur* (2) that if the Judge felt doubtful whether his decision on the point of misjoinder would stand, he might properly frame the issues of fact for the determination of the case, and take evidence on them, and then dismiss the suit on the ground of multifariousness, without recording any finding on the other issues. In the present case the Judge has raised all the issues, and found on the issues of law—first, that there was a misjoinder of causes of action; secondly, that the plaintiff had no cause of action, and dismissed the plaint. As to the latter finding, the Subordinate Judge has, we think, misconceived the object of the suit by reading it somewhat too literally. Its object was two-fold—first, to have the widow restrained from making unlawful alienations in the future of the family property; and, secondly, to have the alienations already made by her declared void beyond her life as against her and the alienees. Under special circumstances the heirs would clearly be entitled to the relief by injunction as against the widow; and as regards past alienations, section 42 of the Specific Relief Act (see ill. (*e*)) gives the heirs the right to such a declaration.

To entitle the plaintiffs to such a declaration it would doubtless be necessary for them to show that they were the presumptive heirs; but it was not, as the Subordinate Judge would appear to have thought, the object of their suit to establish such a relation, ship. But, although the plaintiffs may have causes of action against the several defendants, it would be highly inconvenient, and entirely opposed to the language of section 45 of the Code of Civil Procedure, if the Court were to proceed to hear the suit on its merits. It was suggested, however, on the strength of a remark by Phear, J., in *Hurro Monee Dossea* v. *Onookool Chunder*(3), that the plaintiffs might be allowed to proceed

(1) 8 W. R., 15. (2) 9 Beng. L. R., 241. (3) 8 W. R., 461.

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against the defendant, who alone has appeared by vakil on this appeal. It would probably be sufficient to say that the suit so restricted would not, as admitted by the plaintiffs themselves, be within the ordinary jurisdiction of the Subordinate Judge. We think, however, that the plaintiffs are entitled to no indulgence; for, in the first place, the objection on the ground of misjoinder of causes of action was taken by the defendant's written statement, and the plaintiffs still insisted on the issue being tried, and it has been found against them; and, secondly, this is an attempt to give the Subordinate Judge his special jurisdiction by combining causes of action contrary to the provisions of the Code of Civil Procedure. We must, therefore, confirm the decree on the ground that there is a misjoinder of causes of action. Appellants to pay respondents their costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Manabhai Haridas.

1883 *April* 19.

MAHADEV NARSINH (ORIGINAL DEFENDANT), APPELLANT, *v.* RAGHO KESHAV AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Practice—Right of second appeal—Suits cognizable by Courts of Small Causes—Remand order—Act X of 1877, *Secs.* 562, 586, 588, 589.

The right of appeal given by sections 588 and 589 of Act X of 1877 from an order of remand, as contemplated by section 562, is not taken away by section 586.

Chowdhry Ranjit Singh v. *Jafar Ali Khan* (1) followed.

THIS was an appeal from an order of M. H. Scott, Judge of the District Court of Khandesh, reversing the decree of Govind Jaganath, Second Class Subordinate Judge of Bhusaval, and remanding the case back for trial.

The plaintiffs Ragho and his brother sued the defendant Mahadev for Rs. 150 on account of their share of the emoluments of certain *kulkarni vatans* for three years, due to them under an agreement dated the 23rd September, 1873. Both the parties

* Second Appeal, No. 14 of 1881, from order.

(1) I. L. R., 3 All. 18.