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For the above reasons we hold that this suit is not maintainable. We allow the appeal, set aside the decree, and dismiss the suit with costs throughout on the plaintiff.

Cross-objections dismissed with costs.

Decree reversed.

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APPELLATE CIVIL.

Before Chief Justice Scott and Mr. Justice Batchelor.

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November 19.

UMABAI KOM MANGESHRAV AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* VITHAL VASUDEV AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), section 28—Lands situate at different villages and in possession of different persons under different titles—One suit to recover possession of the lands—Misjoinder of parties or causes of action—Interlocutory judgments against different defendants—Final judgment for possession to be reserved till the conclusion of the trial.

The plaintiff, one of the reversionary heirs, sued to recover possession of a moiety of certain lands which were situate at different villages and in possession of different persons who were alienees by sale, mortgage or lease from the widow of the last male holder. In the lower Courts the suit was dismissed for misjoinder of parties or causes of action.

Held, on second appeal, that though the lands were situate in several different villages, provided the venue for the trial is the same, the right of the plaintiff to have her claim tried in one suit is the same as if the diffe ent holdings were all in the same village. It is never any bar to a suit in ejectment that many persons are in possession. The only possible objections were on the ground of inconvenience. The difficulties arising from variety of defences can be cured by the successive trial of the issues separately affecting different defendants. Following the English practice interlocutory judgments may, if the plaintiff succeeds, be given against different defendants as their cases are disposed of, final judgment for possession of the whole property being reserved till the conclusion of the trial of the whole case.

Ishan Chunder Hazra v. *Rameswar Mondol*(1) and *Nundo Kumar Nasker* v. *Banomali Gayan*(2) approved.

* Second Appeal No. 232 of 1906.

(1) (1897) 24 Cal. 831. (2) (1902) 29 Cal. 871.

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Sami Chetti v. *Ammani Achy*(1), *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*(2), *Mahomed* v. *Krishnan*(3) and *Parbati Kunwar* v. *Mahmud Fatima*(4), referred to.

Kachar Bhoj Vaija v. *Bai Rathore*(5), distinguished.

SECOND appeal against the decision of C. C. Boyd, District Judge of Kanara, dismissing an appeal against the decree of R. R. Gangolli, First Class Subordinate Judge of Karwar.

The plaintiff Annapurnabai sued to recover possession of an equal half share in the properties specified in the schedule annexed to the plaint and mesne profits of the said share for the years 1900, 1901 and 1902. It was alleged in the plaint that the plaintiff, defendant 24 Lakshmibai, and Radhabai, deceased, were the daughters of Mangesh *alias* Mangba, who died leaving no sons. After his death, his widow Parvatibai enjoyed the properties till her death which took place on the 30th July 1900. Since then the plaintiff and defendant 24 became entitled to the properties in two equal shares as heirs, their sister Radhabai having died during their mother's life-time. Defendants 1—23 asserted title to the said properties on the ground that the plaintiff's mother had sold, mortgaged or let the lands on *mulgeni* (perpetual lease) to them, but the said transactions became invalid after the death of their mother, therefore they should be set aside. The plaintiff and defendant 24 had in the year 1900 obtained a declaratory decree to the effect that the plaintiff, defendant 24 and their sister Radhabai, who was then alive, were entitled to the properties held by the defendants and that the alienations made in their favour by the deceased Parvatibai could not affect the title of the plaintiff and her sisters after the death of their mother Parvatibai. Defendant 25 was the transferee of the right, title and interest of defendant 24. Defendants 1—23 refused to give up the plaintiff's share in the properties though they were called upon to do so, hence the present suit.

Defendants 1—23 claimed to hold the properties as mortgagees, purchasers or *mulgeni* tenants under the plaintiff's mother

(1) (1873) 7 Mad. H. C. R. 260.
(2) (1874) 7 Mad. H. C. R. 290.
(3) (1887) 11 Mad. 106.
(4) (1907) 29 All. 267.
(5) (1883) 7 Bom. 289.

Parvatibai and contested the claim on the ground of limitation and misjoinder of parties or causes of action.

Defendant 24 answered that though she had transferred her half share to defendant 25, the transfer was fraudulent and without consideration, therefore, it should be set aside and her share should be given to her.

Defendant 25 asserted his title under the deed of transfer passed to him by defendant 24 on the 8th December 1891.

The Subordinate Judge raised in all fifteen issues, but he found on issues 6, 7 and 15 only. His findings on those issues were :—

(6) The claim was within time.

(7) The suit was bad for misjoinder of parties or causes of action.

(15) The plaintiff was not entitled to any relief.

The Subordinate Judge therefore dismissed the suit. The following is an extract from his judgment :—

Issues 6, 7 and 15.—These issues are the most important ones in this case, and go to the root of the plaintiff's claim. The property described in the plaint admittedly belonged to the plaintiff's deceased father Mangesh *alias* Mangba bin Dulba Shenvi. He died in the year 1852, leaving a widow Parvatibai *alias* Manakbai and 2 sons, Subraya and Pundi *alias* Pundlik. Subraya died in the year 1853 or 1854, leaving a widow Mathura. * * Mathura died in the year 1869 or 1870. Parvati died on the 30th July 1900. Exhibits 4, 5, 6 and 7 show that Pundlik was adopted by Raghunath Krishna Shenvi, a brother of the deceased Parvatibai. It is in evidence that Pundlik too died some years ago, though the exact year of his death cannot be ascertained. Although the plaintiff ingeniously describes this claim as a suit for partition, yet it is evident that her intention is to obtain a declaratory decree that the several alienations made by her mother to many of the defendants in this case are invalid against her after her mother's death.

The suit as framed is not maintainable, as it includes within it several distinct causes of action which could not be joined together in the same suit—*Kachar Bhoj Vaija* v. *Bai Rathore*(1); *Ganeshi Lal* v. *Khairati Singh*(2). In *Sadu bin Raghu* v. *Rama bin Govind*, the Bombay High Court has approved of the decision at page 289, I. L. R. 7 Bombay, though it has been doubted in Madras —*Mahomed* v. *Krishnan*(3); vide I. L. R. 16 Bombay 608 at p. 611. The

(1) (1883) 7 Bom. 289. (2) (1894) 16 All. 272.

(3) (1887) 11 Mad. 106.

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Allahabad decision (I. L. R. 16 All. 279) is on all fours with the present case. This Court is not bound to follow the decisions of the Madras High Court on this point, as it is bound by the decisions of the Bombay High Court in cases of difference of decisions (I. L. R. 17 Bombay, page 555, at page 556). There are ample materials in the evidence recorded in this case to show that the plaintiff's mother Parvatibai held the property in suit adversely to her son Subba, and the latter's widow Mathura who died in the year 1869. She must, therefore, be treated as absolute owner of the property in suit even before the death of Mathura, the widow of Subba *alias* Subraya. It is admitted in the plaint itself that plaintiff's mother Parvatibai enjoyed and dealt with the property from the very day of the death of Mangba in 1852. The evidence afforded by exhibits 284, 300 and 310 is a sufficient indication that Parvatibai's possession of the property in suit before its alienation was adverse to her son Subbaya, and the latter's widow Mathura. Under the circumstances disclosed in this case, I find that the suit is bad for misjoinder of different causes of action against different defendants, in spite of the fact that it is ingeniously designated as a suit for partition, and that it is not in time. The plaintiff was asked to adopt the course indicated in I. L. R. 16 All. 279, but she did not do so in time.

The plaintiff having appealed, the District Judge summarily dismissed the appeal under section 551 of the Civil Procedure Code (Act XIV of 1882). His reasons were as follows:—

I fully agree with the remarks in the judgment that there is every indication that Parvatibai's possession of the property after the death of Mangba was hostile to Subraya and his widow and plaintiff.

It is proved that Parvatibai dealt with parts of the property in her own name instead of in the name of the owners whose guardian she was. The contention that she did not mean, by putting her name, to make herself out owner, will not stand. No guardian acting honestly would behave so. In the plaint in the present suit plaintiff admits that Parvatibai "enjoyed and disposed of" the property since the death of Mangba.

Things being so, clearly the object of this suit was to obtain declaratory decrees against each of the various alienees of Parvatibai; and thus the facts are the same as in *Ganeshi Lal* v. *Khairati Singh* (16 All. 279) which has been twice approved by our own High Court. Mr. Shantaya (appellant-plaintiff's pleader) did not deal with this point at all, but contented himself with arguing that in a suit for partition interested third parties, taking their right from some member of the family, may be added as parties (16 Bom. 608). That is not the point here. This last-mentioned decision upholds the Allahabad ruling above mentioned.

Another decision cited by Mr. Shantaya, reported at p. 925 of Vol. VII, Bombay Law Reporter, does not apply; for the plaint itself in this case shows plaintiff's object.

The plaintiff preferred a second appeal and she having died pending the appeal her daughters Umabai and Radhabai were brought on the record as her heirs.

Raikes (with *N. A. Shiveshvarkar*) for the appellants (heirs of the plaintiff):—We contend that the lower Courts erred in law in holding that our suit was bad for misjoinder of parties or causes of action. The plaintiff's cause of action arose on the death of her mother Parvatibai and then she found that several persons were in possession of the properties of which she wanted to recover possession. It is true that the defendants claim under different titles, such as purchasers, mortgagees and lessees. But the cause of action has no relation whatever to the defences which may be set up by the defendants. Nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a favourable conclusion: *Mussummat Chand Kour* v. *Partab Singh*[1]. In the present case the plaintiff had one cause of action only, namely, the right to recover her share of the property on the death of her mother. The cause of action accrued to her on her mother's death. We rely on section 28 of the Civil Procedure Code and *Ishan Chunder Hazra* v. *Rameswar Mondol*[2], *Nundo Kumar Nasker* v. *Banomali Gayan*[3], *Sami Chetti* v. *Ammani Achy*[4], *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*[5], *Mahomed* v. *Krishnan*[6], *Parbati Kunwar* v. *Mahmud Fatima*[7]. The lower Court relied upon *Kachar Bhoj Vaija* v. *Bai Rathore*[8] and *Ganeshi Lal* v. *Khairati Singh*[9] for holding that the suit was bad for misjoinder. But the first case is clearly distinguishable. It was not a suit for possession. Therein a declaration was claimed during the lifetime of the widow and the cause of action accrued to the reversioner for a declaration with respect to each of the aliena-

(1) (1888) L. R. 15 I. A. pp. 157-158.
(2) (1897) 24 Cal. 831.
(3) (1902) 29 Cal. 871.
(4) (1873) 7 Mad. H. C. R. 260.
(5) (1874) 7 Mad. H. C. R. 290.
(6) (1887) 11 Mad. 106.
(7) (1907) 29 All. 267.
(8) (1883) 7 Bom. 289.
(9) (1894) 16 All. 279.

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tion that was made. The second ruling is no doubt against us, but it does not seem to have been followed in any later case. It is a ruling of the Allahabad High Court and that Court refused to follow it in *Parbati Kunwar* v. *Mahmud Fatima*[1].

The finding of the Judge in appeal as regards adverse possession is clearly wrong. Neither of the exhibits relied upon by him supports the finding. He finds that Parvatibai was the guardian of her son and daughter-in-law. If that be so, then evidently her possession could not be adverse to her wards until she renounced her character as their guardian and held adversely to them. Moreover, the Judge has recorded the finding of adverse possession under the issue as to limitation. This is wrong. Under that issue we had only to shew that our suit was in time under Article 141, Schedule II, of the Limitation Act. The Judge should have raised a distinct issue relating to adverse possession and should have given an opportunity to the parties of adducing evidence thereon. It raises a question of title and requires a specific issue.

S. S. Patkar for respondents 1, 6, 20, 21 and 22 (defendants 1, 6, 20, 21 and 22) :—The suit is bad for misjoinder of causes of actions. The defendants are interested in different lands and the causes of actions against them are not triable jointly, severally or in the alternative in respect of the same matter. Section 28 of the Civil Procedure Code cannot apply because the right to relief is not alleged severally against the defendants in respect of the same matter. The defendants claim under different alienations. The plaintiff alleges in the plaint that the different alienations are not binding on her. The expression "in respect of the same matter" in section 28 means one entire subject-matter in the whole of which the defendants are liable jointly, severally or in the alternative. We rely on *Kachar Bhoj Vaija* v. *Bai Rathore*[2] which rules that the different alienations by the widow are distinct causes of action which could not be joined together in one suit. The case of *Ganeshi Lal* v. *Khairati Singh*[3] which follows *Narsingh Das* v. *Mangal*

(1) (1907) 29 All. 267. (2) (1883) 7 Bom. 289.
(3) (1894) 16 All. 279.

Dubey[1] is on all fours with the present case. The expression "cause of action" comprises not only the plaintiff's title when in issue, but amongst other things the wrongful possession of the separate sets of defendants or any two of the sets in the alternative in respect of the same matter: *Ganeshi Lal* v. *Khairati Singh*[2]. With regard to the view of the Madras High Court as to the desirability of deciding the whole question in order to secure soundness of the particular decision and avoidance of discordant decisions in different cases on facts nearly the same, the Allahabad High Court observes on the other hand in *Ganeshi Lal* v. *Khairati Singh*[2] that the decision as to the rights of one person might be affected by the rights of another alienee. The ruling in *Kachar Bhoj Vaija* v. *Bai Rathore*[3] is opposed to *Sadu bin Raghu* v. *Ram bin Govind*[4]. We rely also on *Sudhendu Mohun Roy* v. *Durga Dasi*[5] and *Ram Narain Dut* v. *Annoda Prosad Joshi*[6]. In the present case there is no allegation of collusion between the defendants. We also rely on *Mussammat Gopal Devi* v. *Jai Narain*[7]. Then again there are different causes of actions against several alienees and these causes of actions are joined with the cause of action against defendant 24 for partition.

We take our stand on sections 31, 45 and 53 clause (*3*), of the Civil Procedure Code. The suit is therefore bad for misjoinder of causes of action.

With regard to the question of adverse possession the issue that was raised in the first Court was—"Is the claim within time?" If the claim of Subraya and Mathurabai was barred as against Parvati, she got title by prescription under section 28 of the Limitation Act and there was a statutory conveyance to her. Therefore the alienees of Parvati got absolute title. The Subordinate Judge found that Parvati's possession was adverse to her son Subraya and his widow Mathura. In the appeal Court, the appeal being summarily dismissed, the defendants

(1) (1882) 5 All. 163.
(2) (1894) 16 All. 279.
(3) (1883) 7 Bom. 289.
(4) (1892) 16 Bom. 608 at p. 612.
(5) (1887) 14 Cal. 435.
(6) (1887) 14 Cal. 681.
(7) (1905) P. R. No. 1 of 1905 (Civ. J.).

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were not heard; therefore the finding that Parvati was guardian is not binding on us. The Judge in appeal, however, found as a fact that Parvati's possession was adverse. Exhibit 284 says that when Subraya died he was about 20 years old. So the time having once begun to run in Subraya's lifetime it could not be stopped by the minority, if any, of Mathura. Further, the plaintiff admits in her plaint that Parvati enjoyed and disposed of the property since the death of Mangba, which took place in 1852. Further, Pundlik being adopted by Parvati's brother, the adoption was invalid and Pundlik remained the son of Mangba. Therefore the possession of Parvati was adverse to the two owners Subraya and under him his widow Mathura and also Pundlik. Besides, Parvati had got the *khátás* transferred to her name. Lastly, the plaintiff should not be allowed to elect according to *Kachar Bhoj Vaija* v. *Bai Rathore*[1].

S. A. Hatyangadi for respondents 18 and 19 (defendants 18 and 19):—The determination of the question of misjoinder must depend for the most part upon the frame of the plaint. In the present case the plaintiff sets out briefly the various alienations under which the defendants claim and wants to have them set aside. This is, therefore, in substance a suit for a declaration that the several alienations are bad as against the plaintiff. The lower Courts were thus right in applying the case of *Kachar Bhoj Vaija* v. *Bai Rathore*[1]. It was contended that the plaintiff's claim against the several defendants was "in respect of the same matter" and that the suit was allowed by the terms of section 28 of the Civil Procedure Code. According to that contention "the same matter" would mean the estate to which the plaintiff was entitled as heir. If that is so, then the contention is not sound. We submit that "the same matter," that is, the estate is, as it were, a constant quantity, and as each of the defendants, according to the statement in the plaint, is interested in a fragment of the estate, it cannot be said that the right to relief is claimed against the defendants severally in respect of "the estate," that is, the whole estate, unless the words such as "the whole or part of" are interpolated after the words "in

(1) (1883) 7 Bom. 289.

respect" in section 28. It is not suggested that any relief is claimed against the several defendants in the alternative. Nor can it be argued that they are jointly liable because no combination or conspiracy is alleged: *Sudhendu Mohun Roy* v. *Durga Dasi*[1], *Ram Narain Dut* v. *Annoda Prosad Joshi*[2]. The rulings in *Ishan Chunder Hazra* v. *Rameswar Mondol*[3], *Nundo Kumar Nasker* v. *Banomali Gayan*[4] and *Parbati Kunwar* v. *Mahmud Fatima*[5], which were relied on, do not apply because therein the suits were differently framed. The *ratio decidendi* of those cases would appear to be that the question of misjoinder would not arise simply because different defences are raised by the defendants. Here, however, the plaint itself wants that the several alienations should be set aside. Those cases are therefore distinguishable on this ground. The reason of the decision in *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*[6] is that it is desirable to go into several alienations at one and the same time because one might affect the propriety or legality of the other or others. In the present case, however, the alienations range over such a long period and the interval between the several alienations is so great that that consideration does not arise. Moreover, it is not correct to say that there is one cause of action in the present case. The plaintiff's title to the whole property is, no doubt, the same. But that circumstance does not constitute the cause of action. The cause of action against each of the defendants is by virtue of his independent wrongful possession, and no combination having been alleged to exist among the defendants, the causes of action are different. They cannot, therefore, be joined in one suit: *Ganeshi Lal* v. *Khairati Singh*[7], *Kachar Bhoj Vaija* v. *Bai Rathore*[8], *Sudhendu Mohun Roy* v. *Durga Dasi*[1].

As regards the finding that the widow Parvatibai was the guardian of the owners who were minors, there is no legal evidence on the point. The only legal evidence is to the effect that they were not minors. Therefore the finding of adverse possession is good.

(1) (1887) 14 Cal. 435.
(2) (1887) 14 Cal. 681.
(3) (1897) 24 Cal. 831.
(4) (1902) 29 Cal. 871.
(5) (1907) 29 All. 267.
(6) (1874) 7 Mad. H. C. R. 290.
(7) (1894) 16 All. 279.
(8) (1883) 7 Bom. 289.

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S. V. Palekar for respondents 10, 16, 21 and 22 (defendants 10, 16, 21 and 22) :—As to misjoinder it was contended that, inasmuch as the defence of all the defendants is the same, there was no misjoinder. But all the defendants may not choose to put forward the same defence, and as a matter of fact, in the present case, they have not put forward the same defence. It is not that a widow as such has absolutely no power of alienation. If that were so, then the position would have been simple. But the law is that a widow has the power of alienation provided there are certain justifying circumstances and those justifying circumstances may be different in different cases. It is a common experience that even in a suit, which is concerned with only one or two alienations by a widow and therefore with proving only a few justifying circumstances, the proceedings lengthen over a considerable period, entailing upon the parties unnecessary expense, trouble and waste of time. How much more would be the inconvenience to which the parties would be exposed if their own individual matter is tacked up with others with which they are not at all concerned? Each co-defendant has to prove a certain set of justifying facts, the truth or untruth of which in no way depends upon the truth or untruth of the justifying facts put forward by another defendant in support of the alienation made to him. This is what has happened in the present case. Therefore we submit that the lower Courts were perfectly justified in not allowing the plaintiff to join together all the defendants in one suit. The principle laid down in *Kachar Bhoj Vaija* v. *Bai Rathore*[1] is based upon common experience and governs the present case: *Ganeshi Lal* v. *Khairati Singh*[2].

SCOTT, C. J.:—The plaintiff alleges that one Mangba died without male issue, leaving three daughters, namely, the plaintiff, the defendant 24 and Radhabai deceased, and that after his death his widow Parvati being entitled to his property went on enjoying it and died on the 30th July 1900.

(1) (1883) 7 Bom. 289. (2) (1894) 16 All. 279.

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These recitals are admittedly inaccurate, the fact being that Mangba left two sons—Subraya and Pundlik. Pundlik was adopted into another family and the estate of Mangba descended to Subraya. Subraya was succeeded by his widow Mathura and after her death by his mother Parvati, his reversionary heiresses being his sisters, the plaintiff and the defendant 24.

The defendants 1—23 claim to be alienees by sale, mortgage or lease from Parvati. The plaintiff claims to recover the estate from the defendants 1—23 and to partition it between herself and defendant 25 as assignee of the interest of her sister (defendant 24).

In the first Court fifteen issues were raised and evidence was taken upon the whole case but the Subordinate Judge only recorded findings on 3 issues, namely :—

6. Is the suit in time ?

7. Is the suit barred for misjoinder of parties or causes of action ?

15. Is the plaintiff entitled to any relief ?

His finding on issues 6 and 15 was in the negative and on issue 7 in the affirmative and he dismissed the suit. An appeal was presented to the District Judge but he summarily dismissed it under section 551 of the Civil Procedure Code, 1882—holding that Parvati has acquired a title by adverse possession prior to the date of her alienations and that the suit was bad for misjoinder of parties and causes of action. The plaintiff in second appeal to this Court contends, first, that the suit is not bad for misjoinder, and, secondly, that no issue of adverse possession was fairly raised and that if such a question was open to the lower Courts the judgment of the lower appellate Court is bad in law.

We will first deal with the question of misjoinder. Section 28 of the Civil Procedure Code provides that "all parties may be joined as defendants against whom the right to any relief is alleged to exist whether jointly, severally or in the alternative in respect of the same matter."

The words "in respect of the same matter" are more general than the words "in respect of the same cause of action" in the corresponding section 26 relating to joinder of plaintiffs. But

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for the purposes of this suit the difference is, we think, not material. The course of decisions in the different High Courts as to the propriety of joining in one suit for possession alienees of different portions of the same estate claiming under the same alienor has not been uniform, but according to the present state of authority the High Courts of Calcutta, Madras and Allahabad would permit such a suit to proceed. See *Sami Chetti* v. *Ammani Achy*(1), *Vasudeva Shanbhaga* v. *Kuleadi Narnapai*(2), *Mahomed* v. *Krishnan*(3), *Ishan Chunder Hazra* v. *Rameswar Mondol*(4), *Nundo Kumar Nasker* v. *Banomali Gayan*(5), *Parbati Kunwar* v. *Mahmud Fatima*(6).

The lower Courts and the respondents in this appeal have relied upon *Kachar Bhoj Vaija* v. *Bai Rathore*(7), but that was not a suit for possession. As pointed out in *Gledhill* v. *Hunter*(8), an action for the recovery of land, or as it is called in the Civil Procedure Code, section 44, "a suit for the recovery of immoveable property," is possessory and of a different nature to a suit for the establishment of title not claiming possession, although a claim for declaration of title as part of the machinery for establishing the right to possession might be joined with a suit for recovery of land. "The claim for a declaration of title and the claim for possession are not the cause of action: they are only a statement at full length of what the cause of action really is, namely, to recover the land."

In our opinion the law applicable to the present case is correctly stated in the two Calcutta cases we have above referred to. In the latter of the two it is said: "The cause of action of a plaintiff suing in ejectment cannot, so far as we can perceive, be affected by the title under which the defendant professes to hold possession. It matters not to the plaintiff how the defendant may explain the fact that he is in possession or seek to defend his possession. What concerns the plaintiff is that another is wrongfully in possession of what belongs to him, and that fact

(1) (1873) 7 Mad. H. C. R. 260.
(2) (1874) 7 Mad. H. C. R. 290.
(3) (1887) 11 Mad. 106.
(4) (1897) 24 Cal. 831.
(5) (1902) 29 Cal. 871.
(6) (1907) 29 All. 267.
(7) (1883) 7 Bom. 289.
(8) (1880) 14 Ch. D. 492 at p. 500.

gives him his cause of action. If this is so, where there is but one person in possession, can there be a difference when the land is in the possession of more than one? We think not. It appears to us, so far as the plaintiff's cause of action is concerned, that it is a matter of indifference to him upon what grounds the different persons in possession may seek to justify the wrongful detention of what is his. What he is entitled to claim is the recovery of possession of his land as a whole and not in fragments."(1)

In the present case the land in suit is situated in several different villages, but provided the venue for the trial is the same, the right of the plaintiff to have his claim tried in one suit is the same as if the different holdings were all in the same village. It was never any bar to a suit in ejectment that many persons were in possession. The only possible objections were on the ground of inconvenience. "When the tenements claimed, and the tenants thereof, are numerous, it is frequently advisable to bring two or more distinct ejectments, rather than one action against all of them for the whole of the property. The exercise of a sound discretion and judgment on this point may sometimes save much trouble." See Cole on Ejectment, p. 76.

In the lower Court any difficulties arising from variety of defences can be cured by the successive trial of the issues separately affecting different defendants. Compare the rules of the Supreme Court in England, O. xii, rule 28.

As regards the question of adverse possession we think it should not have been discussed at all upon the 6th issue. It is a question of title requiring a specific issue. The discussion of the question in the judgment of the first Court was very unsatisfactory probably for want of evidence resulting from the absence of a definite issue. The Subordinate Judge mentions exhibits 284, 300 and 310 as justifying his conclusions. As regards exhibit 284 the record of the Court in Cánarese differs from the Judge's note. The Canarese says that after Mangba's death the *vahivat* was carried on by Parvati till her death. This is quite consistent with management as guardian or as senior member of the family without any adverse possession. Exhibit 300 is a

(1) (1902) 29 Cal. 871 at p. 880.

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rent-note passed in 1858 to Parvati by a yearly (*chalgeni*) tenant. Exhibit 310 is an entry in the revenue records of payment to Parvati in 1865 for land taken up for a railway. These exhibits are quite consistent with a management of Parvati on behalf of junior members of the family. In the lower appellate Court the point was still more inadequately dealt with. The District Judge assumes that Parvati was guardian of the owners at the dates of the alienations effected by her. If this was so, the presumption would be that she effected the alienations honestly as guardian and not dishonestly in breach of her trust. The Subordinate Judge had held, and we assume that in dismissing the appeal summarily the District Judge adopted the finding of the first Court, that Subraya had died in 1853 or 1854, *i.e.*, prior to any of the alienations. But alienations by the guardian during the lifetime of Subraya's widow who was the owner of only a limited estate would not prejudice the reversioners unless justified by necessity.

We set aside the decree and remand the case for re-trial. The lower Court should not fail to raise a specific issue as to adverse possession and should consider whether any inconvenience will result from trying the suit against all the defenants at once or whether it should direct the successive trial of the issues separately affecting different defendants. Following the English practice interlocutory judgments may if the plaintiff succeeds be given against the different defendants as their cases are disposed of, final judgment for possession of the whole property being reserved till the conclusion of the trial of the whole case. Costs costs in the cause.

Decree set aside and case remanded.

G. B. R.