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of the family. Therefore, according to Hindu law, we must hold, in the absence of any other circumstance, that the present appellant had been substantially represented upon the record, and was virtually a party to the suit. Further, even if Shivram, the brother of the appellant, had not been brought upon the record, there was Maruti, the eldest managing member of the family. The debt again was one contracted by Santaji, the grandfather of the appellant, and the latter is bound by it unless it had been contracted by Santaji for illegal or immoral purposes. It has been found that the debt had been contracted by the managing members of the family for its benefit and necessities.

On these grounds the decree must be confirmed with costs.

Decree confirmed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Davar.

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UMABAI, PLAINTIFF, v. BHAU BALWANT AND OTHERS, DEFENDANTS.*

March 3.

*Civil Procedure Code (Act V of 1908) Order I Rule 3, Order II Rule 3—
Grades of several defendants in one suit—"Same act or transaction"—
"Series of acts or transactions"—Practice.*

In reading order I, Rule 3, of the Civil Procedure Code (Act V of 1908) it seems quite obvious that the word "same" which precedes the words "acts or transaction" governs also the words "series of acts or transactions" and must be read before those words also. The first condition to be fulfilled before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must arise against all the defendants from the *same* act or transaction or from the *same* series of acts or transactions. The second condition to be fulfilled under the rule is that some common question either of fact or law should arise against the defendants if separate suits were brought against such persons. Before a plaintiff can join several defendants in the same suit *both* the conditions laid down in the rule must be fulfilled, first, the relief sought against the defendants whether jointly, severally or in the alternative,

* Suit No. 651 of 1907,

must arise from the same act, or transaction or the same series of acts or transactions. And, secondly, there must arise between the plaintiff and all the defendants some common question of law or fact.

The plaintiff may in one action unite several causes of action against several defendants provided that all such defendants are "jointly liable in respect of each and all of such causes of action" and that the condition precedent to the plaintiff being allowed to join several causes of action against several defendants is that such defendants must all "have a joint interest in the main question raised by the litigation" and that causes of action joined in one suit against several defendants must be causes of action in which "the defendants are all jointly interested".

It is not necessary that every defendant should be interested as to all the reliefs claimed in the suit but it is necessary that there must be a cause of action in which all the defendants are more or less interested although the relief asked against them may vary.

THE material facts in this case appear sufficiently from the judgment. At the hearing of the suit counsel for the 1st defendant raised amongst others the following issues :—

- (1) Whether this Court has jurisdiction to try this case.
- (2) Whether the suit is not bad for reason of mis-joinder of causes of action and of parties.

These two issues were ordered to be tried as preliminary issues.

Setalvad with *Raikes* for 1st defendant referred to Order 1, Rule 3, of Civil Procedure Code of 1908. Their right to relief arises from (1) adoption and (2) from mortgages. One transaction has nothing to do with the other. This is a combination of two distinct suits and transactions. No common question of fact or law would arise if separate suits were brought. *Narsingh Das v. Mangal Dubey*⁽¹⁾, *Mowji Monji v. Kuverji Nanaji*⁽²⁾, *Ram Narain Das v. Annoda Prasad Joshi*⁽³⁾, Succession Certificate Act (VII of 1889), section 4.

Umabai could not sue without taking out letters of administration or a succession certificate.

Strangman, Advocate-General, (with him *Inverarity* and *Jayakar*) for the plaintiff.

(1) (1882) 5 All. 168.

(2) (1907) 31 Bcm. 516.

(3) (1887) 14 Cal. 681.

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The point must be decided on the Civil Procedure Code of 1908. Our cause of action is the mortgage in which all the defendants are interested vitally. Common questions of law or fact arise. Under Order 1, Rule 5, it is not necessary that all the defendants should be interested in all the reliefs sought. Even under the old Code this would have been a good suit. See Farran, C. J., in *Raghunath Mukund v. Sarosh K. R. Cama*⁽¹⁾. *Narsingh Das v. Mangal Dubey*⁽²⁾ is no longer law as the ratio of that case disappears now. There were in that suit three causes of action. Here there is only one cause of action namely the mortgage claim, and a part of it is in the 1st defendant's hands. *Serajul Haq Khan v. Abdul Rahaman*⁽³⁾; *Sri Raja Simhadri Appa Rao v. Parttipati Ramayya*⁽⁴⁾. *Mowji Monji v. Kuverji Nanaji*⁽⁵⁾ is in our favour. No embarrassment is caused to 1st defendant and the other defendants don't appear and plead embarrassment. Order 2, Rule 1.

Setalvad in reply referred to *Stroud v. Lawson*⁽⁶⁾. Two conditions must coincide in Order 1 Rule 3. In this case there are two transactions (1) the adoption, (2) the mortgage, entirely unconnected with each other. Order 1, Rule 5, must be taken in connection with Order 1, Rule 3.

**Raghunath Mukund v. Sarosh K. R. Cama*⁽¹⁾ relied on is different and does not apply to the facts of this case. So also in the other cases relied on there was one cause of action. That there is no embarrassment is no defence against multifariousness, it is a defence where joinder is allowed. But there is considerable embarrassment if you look into the nature of the contentions. The adoption took place in Poona. All the evidence is in Poona.

DAVAR, J. :—At the hearing of this suit Mr. Setalvad for the first defendant raised among others the following issues :

- (4) Whether the Court has jurisdiction to entertain this suit.
- (5) Whether the suit is not bad for reason of mis-joinder of causes of action and of parties.

(1) (1899) 23 Bom. 266.

(4) (1905) 29 Mad. 29.

(2) (1882) 5 All. 163.

(5) (1907) 31 Bcm. 516.

(3) (1902) 29 Cal. 257.

(6) [1898] 2 Q. B. 44 at p. 54.

The learned counsel after the issues had been raised and the Advocate-General had stated the facts of the case applied that the two issues Nos. 4 and 5 which involved questions of law should be tried first. The Advocate-General did not object to this being done. Order XIV, r. 2, provides that where in the same suit issues both of law and of fact arise and the Court is of opinion that "the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first."

On the pleadings and the undisputed facts it did appear to me possible that the suit, or at all events a part of this suit, may be disposed of by determination of these issues of law, and I felt that it was desirable in the interest of the parties that these issues should be tried first.

It seems to me however that the decision of issue No. 4 as to the jurisdiction of this Court depends on my decision on issue No. 5 as to whether this suit is bad by reason of misjoinder of causes of action and of parties and the results that may follow from my decision of that issue. I will, therefore, in the first instance confine my attention to the consideration of the question for decision involved in that issue. To arrive at a correct decision on the issue as to misjoinder, it is necessary that the facts must be clearly appreciated.

The undisputed facts are to be gathered from the plaint in this suit and the plaint in suit No. 8 of 1906 which is referred by the plaintiff herein in para 6 of her plaint.

One Vithoba Khundappa Gulve died on the 11th of September 1891 leaving a will dated the 27th of January 1890. The 9th and 10th defendants Nilkant Vinayak Chatre and Shanker Ramchandra Phatarpikar were appointed executors under the will. Probate of the will was granted to the two executors by the Thana District Court on the 28th of October 1891. The 9th and 10th defendants are made parties to this suit in their capacity as executors of Vithoba's will.

The will of Vithoba directed that the residue of his estate should be divided in two parts and one of such parts should be given to Shanker Vithoba Gulve. The plaintiff claims to be

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Shanker's sister. The Advocate-General in his opening stated, that Shanker and the plaintiff Umabai were the illegitimate children of Vithoba by a mistress named Paroo Pringlay. The first defendant's counsel does not admit that the plaintiff is the sister of Shanker. He said his client had no knowledge whether this statement was correct or not. For the present purposes it is immaterial to consider the question whether Umabai is or is not the sister of Shanker. I will assume that Umabai the plaintiff is the sister of Shanker and as such his next of kin.

Vithoba Khimdappa Gulve during his lifetime had, on the 4th of December 1883, lent and advanced to the members of a Hindu family of Bombay named Patker the sum of Rs. 11,000 on the mortgage of an immoveable property belonging to them and situated at Bhuleshvar in Bombay. This mortgage was outstanding at the time of his death. Vithoba's executors divided his property in two parts and made over one of such parts to Shanker. The mortgage was included in the part of Vithoba's property made over to Shanker. The executors did not at any time execute any written assignment or transfer of the mortgage. Shanker died on the 23rd of January 1903 intestate and without any issue. He left surviving his widow Girjabai who was also known as Umabai. Although in suit No. 8 of 1903 she is spoken of only as Umabai, I will continue to call her Girjabai in order to prevent any possible confusion arising from this name being the same as that of the plaintiff. The mortgage moneys were still outstanding when Shanker died, one of the terms of the mortgage being that the mortgage moneys were to be repaid ten years after the date of the mortgage.

Girjabai was a minor when her husband died, and the District Court of Poona in June 1903 appointed her father Balvantrao Suryavanshi the guardian of her person and property. Some time in 1904 Girjabai by her guardian applied to the District Court at Poona for leave to adopt her minor brother and having obtained such leave, she adopted him. This adopted boy Bhaubalvant Suryavanshi, who, after the adoption, was called Vithal Shanker Gulve, is the first defendant in the suit. Shortly after the adoption Girjabai died on the 3rd of January 1905.

On Girjabai's death the Poona Court appointed two persons as guardians of the person and property of the minor Vithal Shanker Gulve.

In the beginning of 1906 the said minor Vithal by his guardians as his next friends filed a suit against the members of the Patkar family to realise the mortgage debt. The mortgaged property being in Bombay the suit was filed in this Court.

When that suit was filed the plaintiff alleged that the amount due to him under the Indenture of mortgage with interest up to the 29th of October 1905 was Rs. 32,018-2-3 and he claimed to recover that sum and further interest. The executors of Vithoba's will not having executed any legal assignment or transfer of mortgage were made co-defendants in the suit and they were defendants Nos. 8 and 9. This suit was heard before me on the 19th of February 1907. At the hearing it was proved before me that the guardians of the minor plaintiff and the first seven defendants had arranged a compromise of the claim for Rs. 20,000; that this compromise was submitted to the District Court of Poona; and that that Court had sanctioned the proposed compromise. I was asked to pass a decree in terms of the compromise. As the Court, whose ward the plaintiff was, had sanctioned the compromise, I passed a decree by consent of all parties in terms of the compromise and sanctioned the same as being for the benefit of the minor plaintiff. When that suit was called on, the 8th and the 9th defendants, the executors of the will of Vithoba, did not appear but, while I was recording evidence, counsel appeared on their behalf and brought to my notice the fact that the adoption of the plaintiff in the suit was disputed in a suit pending in the Poona Court. It then transpired that Vithal had filed a suit in the Subordinate Judge's Court at Poona to recover the keys of a safe and certain documents from Sirdar Natu and that Sirdar Natu had put in a written statement alleging that Vithal's adoption was not valid and asking that Shanker's sister Umabai should be made a co-plaintiff. On being apprised of this fact I felt that Umabai's interests should in same way be safeguarded and at my suggestion the plaintiff undertook to allow the amount realised to remain with his

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attorneys for six months to enable Umabai to establish her contention that the adoption of the plaintiff in that suit was invalid and that she as next-of-kin was entitled to the property left by her brother Shanker. The plaintiff's attorneys were directed to give notice of the decree to Umabai. The consent decree in Suit No. 8 of 1906 is exhibit No. 1 in this suit.

It is proved before me in this suit that the mortgagors paid the amount for which the claim of Vithal was compromised and on such payment in terms of the arrangements arrived at between the parties, the executors of Vithoba executed a re-conveyance of the mortgaged premises on the 18th of July 1907 and the guardians of Vithal executed the same re-conveyance on the 27th of July 1907. The re-conveyance in favour of the mortgagor is exhibit No. 2.

This is a short history of the events as they happened before the plaintiff Umabai filed this suit on the 15th of August 1907.

The first defendant in this suit is Vithal Shanker Gulve, the son adopted by Girjabai the widow of Shanker after his death.

Defendants Nos. 2 to 8 are the members of the Patker family the mortgagors who had originally mortgaged their Bombay property to Vithoba Khundappa Gulve.

Defendants Nos. 9 and 10 are the executors of the will of Vithoba. The plaintiff says that Shanker before his death had given instructions to Girjabai that she should adopt one of her sons; that her sons were available for adoption, that the adoption by Girjabai of the plaintiff in contravention of her husband's injunction is invalid and in-operative, and that she as the sister and next-of-kin of Shanker is entitled to the whole of the property left by Shanker.

The plaintiff then impeaches the compromise of the claim made in suit No. 8 of 1906. She says she protested against the compromise before the consent decree was taken and in support of her statement she produces correspondence which is collectively marked Exhibit B. She contends that the consent decree is not binding on her and that the same ought to be set aside.

The reliefs that the plaintiff claims in this suit shortly put are that it may be declared that the first defendant is not the validly adopted son of Shanker and that she as the sister of Shanker may be declared to be the sole heir of Shanker and as such entitled "to the right, title and interest of the said deceased" in the mortgage in the plaint mentioned; that it may be declared that the decree in suit No. 8 of 1906 is not binding on her; and that an order may be made "setting the same aside" as against her. She then prays that defendants 2 to 8 may be ordered to pay to her the full amount that may be found due at the foot of the mortgage and that in default the mortgaged premises may be sold. In the alternative she prays that if the consent decree be not set aside then it may be ordered that the amount received under the compromise may be paid to her. She prays for other incidental reliefs which I do not think it is necessary to refer to.

The question for the consideration of the Court on the facts as set out above is, in the first instance, whether the suit as constituted is bad by reason of misjoinder of causes of action and of parties.

Section 45 of the old Civil Procedure Code dealt with the joinder of several causes of action in the same suit and section 28 dealt with the joinder of several defendants in one suit.

Rule 3 of Order I is now enacted in the place of section 28 of the old Code and Rule 3 of Order II takes the place of section 45.

The language of Rule 3 Order II is the same as that of section 45 of the old Code but there is considerable difference in the provisions of Rule 3 of Order I and those of section 28.

The Rule now governing the joinder of several defendants in the same suit provides that—

All persons against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist whether jointly, severally or in alternative, where if separate suits were brought against such persons any common question of law or fact would arise, may be joined as defendants in the same suit.

In reading this Rule it seems to me quite obvious that the word "same" which precedes the words "act or transaction" governs

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also the words "series of acts or transactions" and must be read before those words also. It seems to me therefore that the first condition to be fulfilled before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must arise against all the defendants from the *same* act or transaction or from the *same* series of acts or transactions. The second condition to be fulfilled under the Rule is that some common question either of fact or law should arise against the defendants if separate suits were brought against such persons.

In *Stroud v. Lawson*⁽¹⁾, the Court of Appeal had O. XVI, r. I, under their consideration. That is an order providing for the joinder of several plaintiffs in the same suit but the language of the Rule is exactly the same as the language of our Rule 3, Order I. Lord Justice Vaughan Williams, in constructing the Rule before the Court, at page 54 of the report, says:—

The two conditions, namely, that the right to relief must arise from the same transaction and that there must be a common question of law or fact, are not alternative conditions. If that had been meant to be so, the wording of the rule would certainly have been different, as for instance by the insertion of the simple word "or" before the word "where."

It seems, therefore, quite clear that before a plaintiff can join several defendants in the same suit *both* the conditions laid down in the Rule must be fulfilled, first, the relief sought against the defendants whether jointly, severally, or in the alternative, must arise from the same act or transaction or the same series of acts or transactions, and, secondly, there must arise between the plaintiff and all the defendants some common question of law or fact.

Then again, under Rule 3 of Order II, the plaintiff is allowed to unite in the same suit several causes of action against the same defendant or the same defendants jointly.

Since I discussed the question of misjoinder of parties and of causes of action in *Mowji Monji v. Kuverji Nanaji*⁽²⁾ the new Civil Procedure Code, incorporating in it many more Rules of English practice and procedure than were to be found in the old

(1) [1898] 2 Q. P. 44.

(2) (1907) 31 Bom. 516.

Procedure Code, has come into operation and a great many Indian cases based on the construction of the language of section 28 of the old Code are of no value. But we have, however, Indian authorities dealing with general principles and the policy of the law on the question now under my consideration and I think they are still very useful guides.

In *Narsingh Das v. Mangal Dubey*⁽¹⁾ a full Bench of that Court held that a plaint had been properly rejected because the suit was open to the objection that different causes of action against different defendants separately had been joined in the same suit.

In the course of the judgment it is said (at p. 171) :—

“The plaintiff has united different causes of action in one suit against different defendants, who are not jointly liable in respect of *each and all of such causes of action*—a mode of procedure that the law does not sanction.”

This statement of the law by the Full Bench of the Allahabad High Court is important having regard to the fact that the language of section 45 of the old Code and that of Rule 3 Order II of the present Code which deal with the joinder of causes of action against several defendants is the same. As I read the judgment it lays down that the meaning of the word “jointly” in the old section, and therefore in this Rule, is that all the defendants in a suit must be jointly liable in respect of “each and all” of the causes of action which the plaintiff unites against the defendants in the same suit.

That this is the correct reading of the Full Bench judgment appears from the decision in *Bhagwati Prasad Gir v. Bindeshri Gir*⁽²⁾ where Mr. Justice Straight delivering the judgment of the Court and speaking of the test of the applicability of section 45 of the old Code says :—

“Joint interest in the main questions raised by the litigation is a condition precedent to the joinder of several causes of action against several defendants.”

The only other Indian case, which I think it is necessary to refer to, is that of *Mullick Kefait Hossein v. Sheo Pershad Singh*⁽³⁾. There again a division Bench, consisting of Mr. Justice Beverley

(1) (1882) 5 All. 163.

(2) (1883) 6 All. 166.

(3) (1896) 23 Cal. 821.

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and our late Chief Justice Sir Lawrence Jenkins, had under their consideration section] 45 of the Code. In the course of their judgment the learned Judges say (at p. 826):—

“There is no provision in the Code allowing distinct causes of action in which the defendants are *not all jointly* interested, to be united in the same suit.”

Turning to the English Practice we find that Rule 1 of Order XVIII provides that subject to the Rules of that Order the plaintiff may unite in the same action several causes of action. In *Burstall v. Beyfus*⁽¹⁾ the Lord Chancellor, Lord Selborne says:—

“To bring into one claim distinct causes of action against different persons, neither of them having anything to do with the other (and only historically connected. . .) is not contemplated by Order xviii, r. I, which authorises the joinder, not of *several actions* against distinct persons, but of *several causes of action*.”

The result of the authorities seems to me to be that the plaintiff may in one action unite several causes of action against several defendants, provided that all such defendants are “jointly liable in respect of each and all of such causes of action” and that the condition precedent to the plaintiff being allowed to join several causes of action against several defendants, is that such defendants must all “have a joint interest in the main question raised by the litigation” and that causes of action joined in one suit against several defendants must be causes of action in which “the defendants are all jointly interested.”

It is not necessary that every defendant should be interested as to all the reliefs claimed in the suit (O. I. r. 5, Civil Procedure Code) but it is necessary “that there must be a cause of action in which all the defendants are more or less interested although the relief asked against them may vary” (Annual Practice, 1909, p. 163).

Keeping these requirements of the law in view, let me now turn to the facts of this case and see whether these requirements are fulfilled in this suit.

(1) (1884) 26 Ch. D. 35 at p. 39.

The principal defendant in this suit is the first defendant Vithal Shanker Gulve and the main question in this litigation is whether his adoption by Girjabai is good and valid in law as he contends it is or is invalid and in-operative as the plaintiff contends. This is the only question in this suit in which he is interested. If he is declared the validly adopted son of Shanker the suit comes to an abrupt termination—none of the other questions in the suit which affect the other defendants would ever arise. He would then be the owner of the property left by Shanker including the mortgage made by the family of defendants 2 to 8 in favour of Vithoba. He sued to recover the moneys due under the mortgage; the Court whose ward he was sanctioned a compromise of that suit; the Court passing the decree has certified that the compromise was beneficial to him; the moneys decreed are in the hands of his solicitor; the decree is binding on him; and neither he nor the other defendants in the suit raise any question whatever in respect of the mortgage, or the consent decree in suit No. 8 of 1906. As I observed above the validity of his adoption is the only question in which the first defendant is interested. Directly that is established, the suit fails and while that question is tried, the other defendants have nothing to do but to sit with folded arms and watch the result of the fight between the plaintiff and the first defendant. I have noticed what the result of the suit would be if the first defendant's adoption is held to be valid. Now take the other possible result. Suppose the Court comes to the conclusion that the first defendant's adoption is invalid. He immediately loses all interest in the suit. He would then have no interest in Shanker's property and it would be a matter of no interest to him whether the plaintiff succeeds or fails in her contentions against the other defendants. It matters nothing to him whether the decree in suit No. 8 of 1906 is held binding on the plaintiff or not. It matters nothing to him whether defendants 2 to 8 have to pay Rs. 20,000 or Rs. 32,000 and more under the mortgage. The main and the only question he is interested in this litigation is to prove the validity of his adoption.

Now let me turn to the other defendant. The second set of defendants are defendants 2 to 8 the members—the members of the Patker family, the mortgagors of Vithoba. What are the questions

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in the suit between them and the plaintiff? What is the plaintiff's cause of action against them? The plaintiff contends that the compromise of the mortgage debt effected between the first defendant and these defendants is not binding on her. She claims to be entitled to recover the whole amount due under the mortgage. I assume that when the Poona Court sanctioned the compromise of a claim of over Rs. 32,000 for Rs. 20,000 it must have taken into consideration the possibility of the mortgagors being able to reduce the claims originally made in suit No. 8 of 1906. If the plaintiff is declared the beneficial owner of the mortgage, the mortgagor-defendants would be entitled in the event of the compromise being held not binding on the plaintiff to plead all their defences to the claim as originally made. They would be entitled to urge all those contentions for the reduction of the claim which must have been submitted to the District Court at Poona in support of the compromise. Besides this, other defences are open to him. They would say the plaintiff knew of the intended compromise before the decree was taken and took no steps to prevent the decree being passed. On the 30th of January 1907 she was informed of the terms of the compromise and told to take what steps she liked (see exhibit B). The decree was not taken till the 19th of February 1907 and she took no steps to intervene. These defendants would also raise the question whether the plaintiff is entitled to re-open the question in this suit, the executors of this original mortgagee in whom the legal estate had always remained having executed a reconveyance of the mortgaged premises before the plaintiff filed this suit. If the plaintiff succeeded in her main contention against the first defendant and then is allowed to proceed with the second branch of her case against the 2nd set of defendants, further complications would arise because it appears from the written statement of the first defendant that on the property being reconveyed to them defendants 2 to 8 have sold the same and the purchaser whose title would be jeopardised is not a party to the suit.

The first defendant has not the smallest interest in any single one of the questions that would arise between the plaintiff and the other defendants.

It will thus be seen that the questions arising between the plaintiff and the first defendant and the questions arising between the plaintiff and second set of defendants are totally distinct and different. There is no common question of fact or law which affects all the first eight defendants.

Then take the case of the defendants 9 and 10. What is the plaintiff's cause of action against them? They were formal parties to the first suit No. 8 of 1906 because they had not assigned or transferred the mortgage to the plaintiff in that suit. They executed a reconveyance when the person whom they believed to be the beneficial owner of the mortgage debt asked them to do. It is difficult to conceive what the plaintiff's cause of action is against this the third set of defendants. I searched in vain through her plaint to find out what her cause of action is against these defendants and what relief she claims against them. The only possible complaint that she could make against them is that they joined in reconveying the property.

It will thus be seen that all the defendants in the suit are not jointly liable in each and all of the causes of action united in this suit nor are they all jointly raised by this litigation.

It seems to me that in this suit the plaintiff has distinctly combined at least two separate suits. It also appears to me that she has made her claim against defendants other than the first defendant much too prematurely. There is no dispute that the first defendant has, as a matter of fact, been adopted by Shanker's widow Girjabai. He is to all intents and purposes the owner of all Shanker's property till such time as his adoption is set aside and declared invalid by a Court of law competent to try that question. Till she succeeds in establishing the invalidity of the adoption of the first defendant Vithal, she has no right to sue the other defendants in respect of property to which her right is not established. All the property left by Shanker is vested at present in the first defendant and the plaintiff has launched this litigation against the other defendants without having established her right to the property in respect of which she sues. The suit as constituted must in my opinion cause considerable embarrassment to the different defendants.

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Under these circumstances I have no option but to hold that the plaintiff has clearly misjoined in this suit both parties and causes of action. I would like to say here that even if the conclusion to which I have arrived had been different, I would still have held that the causes of action joined in this suit could not conveniently be tried or disposed of together and considered what would have been the right order to make under the discretion vested in the Court by rule 6 of Order II.

Having, however, come to the conclusion that the suit as constituted is bad by reason of misjoinder of parties and of causes of action I find the 5th issue in the affirmative.

I will give the plaintiff the option of electing against which defendant or defendants she proposes to go on with the suit and when she has made her election, I will proceed to consider my decision on the 4th issue as to whether this Court has jurisdiction to entertain the suit against the particular defendant or defendants against whom the plaintiff elects to proceed.

Attorneys for the plaintiff:—*Messrs. Chitnis & Co.*

Attorneys for the 1st defendant:—*Messrs. Dikshit, Dhunjisha and Sunderdas.*

B. N. I.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

PERURI SURYANARAYAN AND COMPANY, PLAINTIFFS, v. GULLA-
PUDI CHINNA NARSINGHAM AND ANOTHER, DEFENDANTS.*

*Arbitration—Reference by parties to a suit—Application to stay
proceedings—Arbitration Act (IX. of 1899), section 19.*

Section 19 of the Arbitration Act only applies where there has been a submission to arbitration before the commencement of legal proceedings.

Ramjidas Poddar v. House (1), followed.

THIS matter was heard in Chambers. The plaintiffs on the 17th September 1908 filed a suit as a Short Cause against the

* Original Suit No. 783 of 1908.

(1) (1907) 35 Cal. 199.

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