

## SHIU MATI

v.

## SHIU NARAYAN AND OTHERS

[SUPREME COURT, 1963 (MacDuff C.J.), 30th November, 1962, 3rd January, 1963]

## Appellate Jurisdiction

Practice and procedure—action against joint defendants—evidence discloses individual actions—counsel's refusal to amend pleadings—judgment for defendants—Magistrates' Courts Rules, Order 8 rr. 5 (2), 5 (3), 8, 9.

The appellant sued the three respondents for £37 13s. 0d. for cash lent to them, and £2 17s. 0d. being the value of articles allegedly converted by the second respondent. From her evidence it appeared that the appellant's real claim was an individual one against each of the three respondents for specific amounts. Counsel for the appellant would not inform the Magistrate whether he would amend his pleadings or withdraw his case against two of the respondents and the Magistrate gave judgment for the respondents. It was argued that the Magistrate should have ordered the names of some of the respondents to be struck out under Order 8 rule 5 of the Magistrates' Courts Rules or ordered separate trials under Order 8 rules 8 and 9.

*Held.*—The rules referred to were not applicable and when counsel for the appellant (having been given the opportunity) did not choose to amend his pleadings in accordance with the evidence the Magistrate was correct in giving judgment for the respondents.

*Appeal from judgment of Magistrate's Court.*

*Ramrakha* for the appellant.

*Sherani* for the respondents.

MACDUFF C.J. [3rd January, 1963]—

This is an appeal against the judgment of the Acting Senior Magistrate, Lautoka in his Civil Action No. 294 of 1962. The appellant, as plaintiff, claimed from the three respondents, as defendants, the sum of £37 13s. 0d. being cash lent to the three respondents and the sum of £2 17s. 0d. being the value of certain articles alleged to have been converted by the 2nd respondent. In her statement of claim the appellant claims that she had lent to the respondents the sum of £30 on the 13th March, 1962, and the sum of £17 on the 5th April, 1962, against which amount she gave credit to the respondents for the sum of £3 17s. 0d. being rent and water rates and the sum of £5 10s. 0d. in respect of moneys paid by the defendants to one Vijay on her behalf. She also claims the sum of £2 17s. 0d. which she alleged was the value of articles detained by the 2nd respondent when she vacated the premises occupied by her and rented from the three respondents.

In her evidence the appellant said that she had lent £30 to the 1st respondent and £17 to the 3rd respondent. At no time in her evidence did she even suggest that these amounts were lent to the respective respondents as agents for the three of them nor that the three respondents were in any way responsible for the articles she alleged to have been forcibly detained by the 2nd respondent.

At the end of the case for the appellant the Court indicated that the appellant's case was, in fact, three separate actions against three separate defendants. Counsel for the appellant would not inform the Court as to whether he would amend his pleadings or whether he would elect to withdraw his case against two of the defendants and the learned trial Magistrate eventually held that there was no evidence to connect the three respondents in a joint enterprise of any kind and that he had no alternative but to hold that the evidence given by the plaintiff on the claim as pleaded raised no case for the defendants to answer. Accordingly, he gave judgment for the defendants with costs.

The appellant appealed on three grounds, two of which were abandoned by her counsel on the hearing and she relied only on her second ground of appeal which read:

"2. The learned trial Magistrate ought to have exercised his powers under Order VIII Rules 5, 8 and 9 of the Magistrate's Court Rules and erred in entering judgment on behalf of the respondents."

Order 8 Rule 5, on which the appellant relies, as far as is relevant, reads as follows:—

"(2) The Court may, at any stage of the proceedings and on such terms as appear to the Court to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out.

(3) No suit shall be defeated by reason of non-joinder or mis-joinder of parties."

I cannot agree that this was a case of mis-joinder of parties on the claim as pleaded. The parties were quite properly joined and until such time as the statement of claim was amended to accord with the evidence given by the appellant there was no mis-joinder of the parties.

The second limb of the appellant's contention is dependent upon Order VIII Rules 8 and 9 which read:

"8. In case a writ states two or more distinct causes of action by and against the same parties, and in the same rights, the court may, either before or at the hearing, if it appears inexpedient to try the different causes of action together, order that the trials be had separately, and make such order as to adjournment and costs as justice requires.

9. In case a writ states two or more distinct causes of action, but not by and against the same parties, or by and against the same parties but not in the same rights, the writ may, on the application of any defendant, be amended or dismissed, as justice may require."

Again I am not in agreement that these rules have any application. The only cause of action which could be called a distinct cause of action was that for £2 17s. 0d. against the 2nd respondent. The learned trial Magistrate could under Rule 8 have ordered separate trials but there was no reason for him to do so. Under Rule 9 he could, on the application of the respondents,

have amended or dismissed the writ but no application was made and I see no reason why he should have done so on his own motion. He certainly gave counsel for the appellant enough opportunities to put his pleadings in order.

In the result the Magistrate took the attitude that counsel for the appellant did not choose to amend his pleadings to accord with the evidence. He, as a Magistrate was bound in justice to the respondents to give judgment on the pleadings. In my view, his attitude was correct and I see no reason to disagree with it.

The appeal is dismissed with costs.

*Appeal dismissed*

Solicitor for the appellant: *K. C. Ramrakha.*

Solicitors for the respondents: *Koya and Co.*