

1938

Present : Soertsz and Keuneman JJ.

TAMBIMUTTU v. RATNASINGHAM et al.

319—D. C. Jaffna, 7,932.

*Cause of action—Misjoinder of parties and causes of action—Action to define boundaries.*

Where the plaintiff sued to have the common boundary defined between his land and other lands on the north and west which were owned by different co-owners, the defendants,—

*Held*, that there was a misjoinder of parties and causes of action.

The plaintiff was allowed to elect in respect of which set of co-owners he would proceed, the action against the others being dismissed.

<sup>1</sup> (1921) 22 N. L. R. 476.

<sup>2</sup> (1913) 3 C. A. C. 83.

**A** PPEAL from a judgment of the District Judge of Jaffna.

*N. Nadarajah*, for plaintiff, appellant.

*N. E. Weerasooria*, for fifth to ninth defendants, respondents.

April 12, 1938. SOERTSZ J.—

*Cur. adv. vult.*

The plaintiff is the owner of the piece of land described in schedule A of the plaint. The second, third, and fourth defendants are said to be the owners of the land described in schedule B on the west of the plaintiff's land, and the fifth, sixth, ninth, and tenth to the thirteenth defendants the owners of the land described in schedule C, and lying on the north of the plaintiff's land.

In this action, the plaintiff seeks to have the correct boundary defined as between his land and the two lands on the north and on the west. He alleges that these boundaries have never been exactly fixed and defined and that the parties have hitherto been possessing their lands only approximately. When the case came to trial, the defendants raised, by way of a preliminary issue, the question whether there was a misjoinder of parties and, or, of causes of action. After hearing arguments addressed to him by Counsel for the respective parties the learned Judge held that there was a misjoinder of parties and of causes of action, and dismissed the plaintiff's action, and made a certain order in regard to costs. The plaintiff appeals, and it is contended on his behalf, that the order of the Judge was wrong because it cannot be said that an action for definition of boundaries is based on a "cause of action" and that, therefore, there is no question here of a misjoinder of *causes of action*, and that so far as *parties* are concerned, the plaintiff is entitled in one action to have all his boundaries defined and, for that purpose, to bring before the Court all the parties interested in the adjoining lands.

Appellant's Counsel relied on the case of *Maria v. Fernando*<sup>1</sup>. But in my opinion, that case has no direct bearing on the question with which we are concerned in this case. That was an action for the definition of boundaries in which the plaintiffs averred that "the limits . . . of the plaintiffs' land having been from time to time shifted by the defendants, there is now no proper fence or landmark defining the said boundaries and the defendants, though often thereto requested, do not consent to have the said boundaries defined". The learned Commissioner of Requests dismissed the plaintiffs' action, holding that "Some overt act of obstruction must . . . be alleged to justify such an action as this, viz., that the plaintiffs have sought to define the boundaries and have been prevented". On appeal Pereira J. held that "the averments in the plaint are sufficient to show that the boundary between the plaintiffs' land and that of the first and second defendants has become uncertain and that, therefore, the averments . . . are sufficient to have the boundary defined and settled". He added "a cause of action in the strict sense in which that expression is used in the Civil Procedure Code is not absolutely necessary in a case like this". Meaning, I take it, that it is not necessary, as the Commissioner thought it was, to show that there

<sup>1</sup> 17 N. L. R. 65.

was either "a denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty and the infliction of an affirmative injury". But the question that arises in this case, viz., whether there can be a misjoinder of defendants in a case for the definition of boundaries was neither raised nor decided in that case, although the plaintiffs sued the owners both of the land on the north and of that on the west. Appellant's Counsel based his argument on this fact, and contended that the point was not taken in that case because in an action for the definition of boundaries, a plaintiff is unrestricted, and is entitled to sue the different sets of co-owners in one action if all his boundaries were uncertain. I am unable to accept this view. It does not seem either fair or proper that the co-owners of the land to the west should be in the case while the boundary between the plaintiffs land and the land on the north is being tried as between him and the co-owners of the northern land. There is no reason apparent to me why they should be made to lose their time and their money while that issue is being tried. And so *vice versa*. There may conceivably be cases in which while the northern boundary is being defined the owners of the land on the east and west should or could be brought into the action as co-defendants. Counsel for the appellant adduced certain instances to show that that course might become necessary. But in the case before us, the plaint contains no averment to show that the owners of the land on the north are interested in the definition of the western boundary or *vice versa*, and therefore, I can see no reason why both the owners of the northern and of the western lands should figure as co-defendants in the same action. To say the least, it is a most inconvenient course. I would, however, refrain from dismissing the plaintiff's action altogether, and remit the case for the plaintiff to elect the set of defendants against whom he would proceed in this action. The action as against the other defendants will be dismissed with costs. The action will then proceed between the plaintiff and the defendants against whom plaintiff chooses to continue the action, but these defendants will be entitled to the costs of the trial date in the Court below and of this appeal in any event. All other costs will abide the result.

KEUNEMAN J.—I agree.

*Set aside.*

