dependent upon whether one or the other party does or does not appeal, once the matter has come before it in appeal by one of the parties. So this argument cannot be accepted. It has already been pointed out that in so far as the material on the record is concerned, the conclusion reached by the appellate authority is amply supported by it and the evidence of the witnesses mentioned gives support to it. So this revision application is dismissed, but in the circumstances of the case there is no order in regard to costs.

N.K.S.

REVISIONAL CIVIL

Before R. S. Narula, J.

AMAR SINGH,—*Petitioner.*

Versus

JAGDISH AND OTHERS,—*Respondents.*

Civil Revision No. 245 of 1969

September 23, 1969

Code of Civil Procedure (V of 1909)—Order 1 rule 3—Scope and object of—Suit for pre-emption—Suit property leased prior to sale—Validity of lease deed—Whether can be challenged in such pre-emption suit—Lessee of the property—Whether a proper party.

Held, that the object of rule 3 of Order 1 of the Code of Civil Procedure is to avoid multiplicity of suits and needless expense to the parties if it can be avoided without embarrassment to the litigants concerned and the Court. In order to justify the joining of more than one person as defendants, it is not necessary to show that all the defendants are interested in all the reliefs and transactions comprised in the suit. If a pre-emptor is able to prove that the sale and the lease of the property though executed on two different dates, really form part of one single transaction, and it is further found that the per-emptor is entitled to be substituted as a vendee, it is open to the pre-emptor to avoid the lease if he can prove that the same is either invalid or is in reality non-existent and is a mere farce. To direct the pre-emptor to strike out the name of the lessee when he is made a party in the suit for pre-emption and to drive the former to a second round of litigation against the latter in case of the latter's success in the suit for pre-emption, would be to encourage the very thing which is sought to be discouraged by rule 3 of Order 1 of the Code. It is but fair that he should remain a party to the suit if the plaintiff wants a finding as to the genuineness or validity of the

impugned lease-deed, as it would be contrary to the principles of natural justice for the trial Court to record any finding in connection with that matter without having the alleged lessee before the Court. (Para 5)

Petition under Sectoin 115 of the Civil Procedure Code for revision of the order of the Court of Shri Raj Kumar Gupta, Sub-Judge, vst Class Karnal, dated the 1st February, 1969, holding that the plaintiff Pre-emptor should not be driven to a separate suit and be allowed to challenge the impugned lease in this suit for pre-emption itself.

N. C. JAIN, ADVOCATE, for the petitioner.

MUNISHWAR PURI AND R. N. NARULA, ADVOCATES, for the Respondents.

JUDGMENT

NARULA, J.—The brief facts leading to the filing of this petition for revision of the order of the trial Court may first be surveyed, in order to appreciate the solitary jurisdictional question of law on which arguments have been addressed at the hearing of this case. For facility of reference, I will call the parties to this litigation by their titles in the Court of the Subordinate Judge.

(2) Mst. Nihali defendant No. 1, sold the land in dispute to Man Singh and his three brothers defendants Nos. 2 to 5 by a registered sale-deed, dated June 8, 1967, for Rs. 18,000. Two days before the sale, i.e., on June 6, 1967, Nihali executed a registered lease-deed, in respect of the land which forms the subject-matter of this litigation, in favour of Amar Singh defendant No. 6, who has been stated by the counsel for the plaintiffs-respondents to be the father-in-law of the vendees. Jagdish son of Sadhu filed a suit for possession in the purported exercise of his right of pre-emption against the vendor and the vendees, and also impleaded therein Amar Singh defendant No. 6, the alleged lessee. Subsequently, Lakshmi Chand (plaintiff in the other suit), also filed a suit for possession of the same land in exercise of his right of pre-emption. Lakshmi Chand also impleaded Amar Singh petitioner as a defendant to his suit.

(3) In paragraph 4 of the plaint of the suit filed by Jagdish, it was stated as below :—

> "That with a view to harm and deprive the plaintiff of his superior right of pre-emption defendant No. 1, with collusion and consent of defendants Nos. 2 to 5 vendees, and Shri Karta Ram, their father, hit upon a device and executed a bogus and fabricated lease-deed, in favour of

defendant No. 6 for a period of Kharif 1967 to Rabi 1987, on a nominal rent of Rs. 300 per annum, and this lease-deed was got executed and registered on June 6, 1967, i.e., only two days before the execution and registration of the sale-deed."

In paragraph 7 of the plaint it was further pleaded :—

"That the lease-deed, executed by defendant No. 1 in favour of defendant No. 6 is not binding on the plaintiff on the following grounds—

(i) that in fact no lease was given by defendant No. 1 in favour of defendant No. 6. The document is a forgery and fabricated one and got executed by defendant Nos. 2 to 5 in favour of defendant No. 6, father-in-law of Prem Singh vendee, with the sole object of defeating the right of pre-emption;

(ii) that the possession has not passed to the lessee and all is only a made up affair;

(iii) that the lease and the sale formed part of the same transaction, and so the plaintiff is not bound by it."

In paragraph 4 of the written statement of the vendees (defendants 2 to 5), the allegation made in paragraph 4 of the plaint was denied, and it was added that defendant No. 1 had validly executed a lease-deed before the execution of the sale-deed, and the lease-deed would expire, in 1987. The averments made in paragraph 7 of the plaint were denied, and it was alleged that the lease-deed was valid, and had been duly executed by the vendor prior to the sale, as she was incapable of managing her own affairs. It was added that the plaintiff in the present suit had no right to challenge the lease. It was further stated that possession of the land in dispute was with the lessee, and that the lease and the sale were separate transactions. In a preliminary objection raised in the written statement of Amar Singh defendant No. 6, it was urged that the suit was not maintainable in its present form, as regards the lease-deed in his favour. The specific objection was:—

"The plaintiff who wants to step into the shoes of defendant No. 1, should first get the lease-deed set aside and then file a suit for pre-emption."

(4) By his order, dated February 1, 1969, the Subordinate Judge, First Class, Karnal, repelled the preliminary objection raised by Amar Singh and relying on the judgment of Puranik, J., in *Marutirao Govindrao* v. *Nathmal Jodraj and another* (1), held that plaintiff-pre-emptor should not be driven to a separate suit, and he should be allowed to challenge the impugned lease in this suit for pre-emption itself. It is against the abovesaid order of the trial Court that the present revision petition has been filed by Amar Singh defendant No. 6.

Mr. N. C. Jain vehemently argued :—

(i) that the plaintiff has no *locus standi* to challenge the genuineness and the validity of the lease-deed without first succeeding in the pre-emption suit and stepping into the shoes of the vendor; (This is reverse proposition as compared with the Preliminary objection).

(ii) that no relief having been claimed against defendant No. 6, the dispute as to the lease executed in his favour should not be allowed to be brought into the pre-emption suit, and should be left to be fought out in a subsequent litigation, in case the plaintiff succeeds in proving his right of pre-emption and is able to obtain a decree for possession of the land;

(iii) that the judgment of the Nagpur High Court in *Marutirao Govindarao's case* (1), is based on the peculiar features of section 183 of the Berar Land Revenue Code, inasmuch as there is no corresponding provision in the Punjab Pre-emption Act; and

(iv) that if no distinction between the Nagpur case and the present case can be found out, the judgment of Puranik, J. in the Nagpur case does not lay down the correct law.

(5) Rule 3 of order 1 of the Code of Civil Procedure lays down :—

"All persons may be joined as defendants 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 the

(1) A.I.R. 1947 Nagpur 229

alternative, where if separate suits were brought against such persons, any common question of law or fact would arise."

One of the conditions precedent for the application of rule 3 is that the right to relief must have arisen in respect of or out of the same act or transaction, or series of acts or transactions. Whereas the plaintiff has specifically urged that the lease and the sale are part of the same transaction, this allegation has been denied by the defendants. No decision on that part of the issue between the parties has yet been given by the trial Court. The object of rule 3 of Order 1 is to avoid multiplicity of suits and needless expense to the parties if it could be avoided without embarrassment to the litigants concerned and the Court. It is settled law that in order to justify the joining of more than one person as defendants, it is not necessary to show that all the defendants are interested in all the reliefs and transactions comprised in the suit. Nor am I aware of it having ever been laid down that no one can be joined as a defendant unless some specific relief is claimed against him. Joining of proforma parties as defendants is well-known. If the plaintiff is able to prove that the sale and the lease, though executed on two different dates, really form part of one single transaction, and it is further found that the plaintiff is entitled to be substituted as a vendee in place of defendants Nos. 2 to 5, it would probably be open to the plaintiff to avoid the lease if he can prove that the same is either invalid or is in reality non-existent and is a mere farce. It has not been disputed that even if the petitioner is excluded from the array of defendants, a suit for possession would be maintainable against him on the ground that no valid lease of the land in dispute has in fact ever been created in his favour by defendant No. 1, after the plaintiff succeeds in the pre-emption suit, and becomes the owner of the property by depositing the rest of the pre-emption money. To direct the plaintiff to strike out the name of defendant No. 6, from the present suit, and to drive the plaintiff to a second round of litigation against the present petitioner in case of the plaintiff's success in the suit for pre-emption, would be to encourage the very thing which is sought to be discouraged by rule 3 of Order 1 of the Code of Civil Procedure. If the plaintiff had not impleaded defendant No. 6 and if defendant No. 6 had come forward to be made a party to the suit of pre-emption, the application of the defendant would not have normally succeeded as he is certainly not a necessary party to the suit for pre-emption. The provision made in rule 3 of Order 1 of the Code is merely enabling and does not cast an obligation on a plaintiff to implead defendants against whom different

reliefs may be claimed even if no specific relief has been claimed against defendant No. 6. As such it is, but fair that he should remain a party to the suit if the plaintiff wants a finding as to the genuineness or validity of the impugned lease-deed, as it would be contrary to the principles of natural justice for the trial Court to record any finding in connection with that matter without having the alleged lessee before the Court.

(6) In *Marutirao Govindrao's case* (1) (supra), the plaintiff-pre-emptor had impleaded the lessee of the land in suit as a co-defendant with the vendor and the vendees. The allegation of the plaintiff was that the lease-deed was bogus and had been obtained from the original vendor collusively with a view to clogging the plaintiff's right of pre-emption. The defendants including the lessee argued before the trial Court that the lessee was not a necessary party to the suit. The trial Court held that the genuineness or otherwise of the lease-deed could not be gone into in the pre-emption suit. A petition for revision against the order of the trial Court was allowed by Puranik, J., on the ground that sub-section (2) of section 183 of the Berar Land Revanue Code permits the Court to examine the transaction and fix a fair consideration for the interest sought to be pre-empted. It was held that inasmuch as the plaintiff was asking the Court to examine the transaction of sale, and there were recitals in the sale-deed regarding the lease-deed, it was open to the Court to examine the correctness of those recitals. In the present case Mr. Jain states that the sale-deed does not make any mention of the lease-deed. Learned counsel for the respondents were not in a position either to admit or deny that allegation. Neither the sale-deed nor any copy thereof has been shown to me. Even if it is presumed that there is no recital about the lease-deed in the sale-deed, it is still open to the plaintiff to allege and prove that the sale-deed and the lease-deed, though executed on separate dates and on separate papers, in fact form one transaction. The plea of real price being much less has also been taken in this case. Puranik J., held in *Marutirao Govindrao's case* (1), that the learned Judge was not aware of any law which prevents the Court from trying a suit as laid, and that the plaintiff was entitled to have the question as to the actual possession of the property cleared up in the pre-emption suit itself instead of the plaintiff being driven to file another suit. It was held that the alleged lessee was in these circumstances necessary party to the suit as the inquiry sought to be made by the plaintiff into the validity of the lease could not be held in the absence of the alleged lessee. Nor am I able to see any material distinction between

the Berar case and the present case on the question of the relevant legal provision. Section 183 of the Berar Land Revenue Code has not been shown to me. But from whatever was stated about that provision in the judgment of the High Court, it appears that the provision of section 25 of the Punjab Pre-emption Act which authorises the Court to determine whether the price at which the sale is stated to have taken place has been fixed in good faith or not, and in case of a finding in the negative to fix the market-value as the price for the purposes of the suit, is in *pari materia* with section 183 of the Brar Land Revenue Code. Mr. Jain has not been able to show to me any law prohibiting the joining of the lessee as a co-defendant with the vendor and the vendees in the suit for pre-emption where the property in suit is alleged to be in possession of a third person who claims as a lessee, and the genuineness of whose lease is disputed by the plaintiff. I think it would be unfair to the plaintiff to drive him to a separate suit for possession after succeeding in the suit for pre-emption. If, however, the plaintiff fails in the pre-emption suit, the alleged lessee would not suffer in any manner except to the extent of the costs incurred by him in defending this suit for which there is ample provision in the Code to compensate him.

(7) Mr. Jain, relied on the judgment of the learned Judicial Commissioner, Ajmer, in *Dolat Ram Singhi* v. *S. Amarchand Sarda and others* (2). In that case Atma Charan, J. C., held that in a suit for pre-emption the mortgagee of the land in suit is not a necessary party. It was observed that the mortgagee could be produced as a witness. According to the finding recorded by the learned judicial Commissioner, there was no triable issue between the mortgagee and the pre-emptor in *Dolat Ram Singhi's case* (2). It was the admitted case of both parties that the market value of the equity of redemption was Rs. 2,000. No relief had been asked for in the plaint against the mortgagee. The only dispute related to the court-fees payable on the plaint because of the impleading of the mortgagee, and that was also an incidental matter. It was in those circumstances that the learned Judicial Commissioner held that the mortgagee was not a necessary party to the suit. The facts of the Ajmer case are clearly distinguishable from the case before me. In fact the judgment of Puranik, J. of the Nagpur High Court appears to be on all fours. For the reasons already recorded by me. I am in respectful agreement with the view expressed by Puranik, J. The judgment of the Judicial Commissioner of Tripura in *Kshetra Mohan*

(2) A.I.R. 1950 Ajmer 11 (1)

Nath Sarma v. *Mohamad Sadir Bepari and others* (3), relates to a reverse case. A person wanted to be impleaded as defendant to a suit for specific performance on the basis of an anterior title to the property said to have been in existence before the agreement for specific performance was entered into. It was observed that such a person did not come either under section 27(b) or (c) of the Specific Relief Act, and the plaintiff could not obtain any specific relief against such a person. That being the case, it was held that such a person could not insist upon the plaintiff making him a party thereby converting the suit for specific performance into one on title and introduce matters in the suit which are quite foreign to obtain the relief prayed for therein. I have already observed that the provision contained in rule 3 of Order 1 of the Code of Civil Procedure is for the benefit of the plaintiff, and merely enables a plaintiff to implead any person, who is permitted by that rule to be arrayed as a defendant, but the said provision does not entitle any person to insist on becoming a party to a suit even if the plaintiff does not desire to implead him.

(8) Messrs Munishwar Puri and R. N. Narula Advocates, for the two plaintiffs referred to the judgment of Padhye, J. in *Rambhau Wamanrao Joshi and another* v. *Ganesh Deorao Patil and others* (4). Joinder of certain defendants was allowed in that case as it was found to be perfectly unobjectionable as it would not have rendered the suit in any way vexatious or harassing to the defendants. The facts of that case are distinguishable and the judgment of Padhye, J., is not of any direct and real assistance to the respondents though it does tend to support their case.

(9) Mr. Puri, lastly argued, that the order of the trial Court does not amount to "a case decided" within the meaning of section 115 of the Code of Civil Procedure, and that, therefore, this petition for revision against that order is not competent. In the view I have taken of the merits of the controversy, it is unnecessary to go into this academic question. As at present advised, I am inclined to think that if it could be shown that the trial Court has no jurisdiction to proceed with the suit against the defendant-petitioner in the present litigation, the order of the trial Court holding to the contrary would have amounted to "a case decided" within the meaning of section 115.

(10) For the reasons already recorded by me, I am of the opinion that no exception can be taken to the order of the trial Court allowing

(3) A.I.R. 1964 Tripura 16
(4) A.I.R. 1948 Nagpur 32

the suit to proceed without striking out the name of defendant No. 6 from the array of defendants. This revision petition, therefore, fails and is dismissed with costs.

N. K. S.

APPELLATE CIVIL

Before H. R. Sodhi, J.

JOHARI MAL,—*Appellant.*

versus

SURJAN SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1068 of 1968

September 24, 1969.

Limitation Act (XXXVI of 1963)—Section 14(3)—Code of Civil Procedure (V of 1908)—Section 11 and Order 23, Rule 1—Previous suit withdrawn with permission of the Court to file fresh suit—Period in prosecuting such previous suit—Whether to be excluded in computing period of limitation for subsequent suit—Conditions for such exclusion—Stated—Plea of resjudicata—Whether relates to jurisdiction of the Court or other cause of like nature.

Held, that a provision has now been made in the Limitation Act of 1963 for the first time whereby the plaintiff who withdraws a suit under Order 23, rule 1 of Code of Civil Procedure can in computing the period of limitation normally prescribed for the suit exclude the time spent in prosecuting the previous suit provided he prosecuted the same with due diligence and good faith and the suit was withdrawn as it was bound to fail because of defect in jurisdiction of the Court or other cause of a like nature. The defect must relate to the jurisdiction of the Court or a cause of the same type and not that for any other formal defect for which suit is withdrawn the plaintiff gets a right to deduct the period so spent. It is not possible to lay down an exhaustive list of all causes showing defect of jurisdiction and each case will depend on its own facts and circumstances. The legislature, however, in clause 'C' of the Explanation to section 14 of the Act has provided that misjoinder of parties or of causes of action shall be deemed to be a cause of the like nature with defect of jurisdiction.

(Para 5)

Held, that the words 'other cause of a like nature' in section 14(3) of the Act must be liberally construed but they have to be given a meaning *ejusdem generis* with and analogus to the words preceding them. They connote that the suit must be one which the Court cannot entertain because of those defects. There must thus be a defect which affects the inherent capacity of the Court to entertain the suit and prevents it from trying the same.