

In Re: Kelloth Ibrahim Haji and ors.

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Court : Chennai

Decided On : Sep-13-1956

Reported in : AIR1957Mad699

Judge : Ramaswami, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 1, Rule 1, 10(2) and 23

Appeal No. : Civil Revn. Petn. No. 1178 of 1956

Appellant : In Re: Kelloth Ibrahim Haji and ors.

Advocate for Pet/Ap. : C.S.Swaminathan, Adv.

Disposition : Revision dismissed

Judgement :

Ramaswami, J.

1. This is a Civil Revision Petition sought to be preferred against the order made by the learned District Munsif of Badagara in K. I. A. No. 517 of 1936 in O. S. No. 339 of 1955.

2. The facts are:-- The suit is one for partition and separate possession of the plaintiff's share in the properties shown in the plaint. The properties, it is alleged, originally belonged to one Moideenkutti who died about 20 years ago. Plaintiff

alleges that he has obtained a share in the property by virtue of an assignment from some of the legal representatives of the said Moideenkutti, Defendants 8, 10 and 11 also claim shares in the property by virtue of assignments executed in their favour by certain persons who are also stated to be some of the legal representatives of the said Moideenkutti. Therefore, these defendants preferred R. I. A. No. 517 of 1956 in the lower Court contending that in view of the fact that there is keen dispute between the parties regarding the shares, regarding devolution of right and regarding the original partition set up in the written statement and some other matters raised therein, their assignors should also be impleaded. The plaintiff resisted this application on the ground that he cannot be compelled to implead the assignors in view of the admitted position that they have no subsisting right over the properties and that it is only an attempt to cause unnecessary complications and put the plaintiff to trouble, delay and expense and that he cannot also be compelled to implead persons for the purpose of safeguarding the rights of the party-defendants which should be left open to be agitated by them if necessary in separate proceedings.

3. Order I, Rule 10 (2) of the Code of Civil Procedure states:

"The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.'

4. The sub-rule corresponds to the second sentence of Order XVI, Rule 11, of the English Rules of Supreme Court and confers wide discretion to [he Court to meet every case of defect of parties but is subject to two limitations, viz., (1) that the Court has no power to join a person as a party if he could not have been originally impleaded under Order 1, Rule 1, or Rule 3, C. P. C., and (2) that the presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved in the suit.

5. The discretion must be exercised in a reasonable manner so as not to cause inconvenience or embarrassment. In exercising the powers under this rule Courts ought to see that they do not load the record with parties who are shown to have only indirect or remote interest and that the trial of the suit is not embarrassed by the simultaneous investigation of totally unconnected controversies. This rule does not authorise the Court to introduce into a suit as a defendant a person who claims the property in the suit by a title quite distinct from that under which any of the parties to the suit claims, *Kalian Rai v. Ram Ratan*, ILR 18 All 306 (A). See *Joy Cobind v. Gouree Proshad*, 7 Suth WR 201 (13). A person can be added only when there are questions directly arising out of and incidental to the original cause of act in which such person has identify of community of interest with one or original plaintiff or defendant. *Naraini Kuar v. Durjan Kuar*, ILR 2 All 738 (C): so also *Mahomed Badsha v. Nicol*; ILR 4 Cal 355 (D). The plaintiff who pays heavy court-fee is after all the dominus lites and is entitled in the absence of the overriding considerations provided in Order I, Rule 10 (2), to prescribe the carriage of his own suit. The Court should not re-write the plaint or queer the plaintiff's pitch or ordinarily add parties without the concurrence of the plaintiff.

6. The following three decisions are in point. In *Vithobe v. Secretary of State*, AIR 1925 Nag 373 (E), it is held that the plaintiff is the best judge of his own interests and no defendant should be added against the plaintiff's will even when the defendant asserts that his interests will be affected by the plaintiff's suit and that it is not the intention of law to let third persons ventilate their own grievances in, and thus derive profit from, a suit commenced by another. In *Vaithilinga Pandara Sannadhi v. Sadasiva Iyer*, AIR 1926 Mad 838 (F), it was held that when a party sought to be added as defendant is not a necessary party but only permissible or proper party, addition cannot be ordered if objected to by the plaintiff and that all questions involved in the suit, refers to questions only between parties to the suit Questions involved in the suit do not mean all chums which may possibly be put forward by anybody: *Sitaramayya v. Ramappayya*, 5 Mad LW 207: AIR 1918 Mad 1137 (G). In *Palanisamy v. Komara Chettiar* : AIR 1950 Mad 91 , it was held that the Court should consider mainly whether the presence of the proposed parties would be necessary for adjudicating upon the questions that are involved. in the suit and an order for addition of parties should not be made merely with a view to

avoid multiplicity of suits if otherwise their presence is not necessary for determining the real questions involved in the suit. See also *Gosto Behari v. Sur's Estate Ltd.*, ILR (1946) 1 Cal 656 (I); *Virbhadrappa v. Snekabai*, : AIR 1939 Bom 188 : ILR 1939 Bom 232 (J); *Moser v. Marsden*, (1892) 1 Ch 487 (K).

7. Bearing these principles in mind, if we examine the facts of this case, we find that the learned District Munsif came to the correct conclusion and the persons who are now sought to be impleaded have no subsisting right over the properties and they are sought to be impleaded only for the purpose of getting their evidence and it would not be proper to make them parties to the suit and that the petitioners' apprehension that they would be driven to the necessity of filing a separate suit against these persons is not a sufficient justification to compel the plaintiff to implead them as parties to the suit.

8. The endeavour of the learned advocate, therefore, before me was that the learned District Munsif should have allowed the addition of the parties invoking the provisions for third party procedure. In doing so the learned advocate overlooks the fact that the Court can consider the third party procedure only on an application filed in terms of Order VIII-A of the Code of Civil Procedure. Such is not the case here and it is open to the petitioners to prefer such an application in the lower Court,

9. This Civil Revision Petition is dismissed.

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