HILDA ENID PERERA
v.
SOMAWATHIE LOKUGE AND ANOTHER

SUPREME COURT
DHEERARATNE, J.
WIJETUNGA, J. AND
BANDARANAYAKE, J.
SC APPEAL NO. 86/99
CA REV. NO. 821/97
CALA NO. 197/97
DC PANADURA NO. 1041/L
07TH, 30TH MARCH, 2000
26TH APRIL, 2000

Civil Procedure Code - Addition of a necessary party - Section 18 of the Code - Vindicatory action.

The plaintiff-appellant ("the plaintiff") instituted an action in the District Court against the defendant for a declaration of title to the property in dispute and for ejectment and damages. The plaint averred that the defendant - 1st respondent ("the defendant") was the original owner of the property; The defendant sold it to the 2nd respondent, a Finance Company ("the Company") by Deed No. 420 dated 18. 02. 1985; the company entered into an agreement to sell the property to one Lokuge (the defendant's nephew); that agreement was cancelled by Deed No. 1116 dated 20. 03. 1989 on the ground of Lokuge's default; and thereafter the plaintiff purchased the property by Deed No. 1117 dated 20. 03. 1989.

The defendant filed answer and made an application to add the Company as a necessary party. The District Judge allowed the application. It was the defendant's position that the alleged sale of the property by her to the Company on 18. 02. 1985 was not true. Her signature was obtained by the Company but she never parted with the title to the land in dispute. It was submitted on behalf of the defendant that the Company and the plaintiff had acted together fraudulenty in connection with the land in dispute.

Held :

In order to avoid multiplicity of actions and to diminish the cost of litigation and for the effective and complete adjudication of all questions involved in the case, the District Judge was correct when he ordered the addition of the Company as a party defendant.

Cases referred to :

1. *Arumugam Coomaraswamy v. Andiris Appuhamy and Others* (1985) 2 Sri L R 219
2. *Amon v. Raphael Tuck and Sons Ltd.* (1956) 1 All E.R. at 73
3. *Norris v. Beazley* (1877) 2 CPD 80
4. *Byrae v. Browne and Diplock* (1889) 22 QBD 657

APPEAL from the Judgment of the Court of Appeal.

Ikram Mohamed, P.C. with *Ms. A.T. Shayama Fernando* and *Ms. Sonali Perera* for the appellant.

Bimal Rajapaksha with *Raja Peiris* and *Ms. Nishanatha Mendis* for the 1st respondent.

I.S. de Silva with *Vinoth Wickramaratne* for the 2nd respondent.

Cur. adv. vult.

July 31, 2000.

SHIRANI BANDARANAYAKE, J.

The Plaintiff-appellant (appellant) instituted action in the District Court of Panadura against the defendant-respondent (1st respondent) for a declaration of title to property bearing assessment No. 144, Kotagedera, Madapatha, for ejectment of the 1st respondent therefrom and for recovery of damages at the rate of Rs. 10,000/- per month from 27. 07. 1995. The appellant pleaded in the plaint that:

a. the 1st respondent was the original owner of the said property;

b. the 1st respondent sold the said property to Panadura Finance and Enterprises Ltd., (2nd respondent) by Deed No. 420 dated 18. 02. 1985;

c. the 2nd respondent entered into the agreement to sell, No. 421 dated 18. 02. 1985, with one Lalith Chandrasiri Lokuge in respect of that property;

d. the said Chandrasiri defaulted and hence the said Agreement to sell was cancelled by Deed No. 1116 dated 20. 03. 1989;

e. the appellant purchased the said property by Deed No. 1117 dated 20. 03. 1989;

f. the 1st respondent instituted action No. 416/L in the District Court of Panadura against the 2nd respondent, Chandrasiri and the appellant for cancellation of the said Agreement to sell No. 421 and for a declaration that all transactions done thereafter are void;

g. the said action which was fixed for trial ex-parte was dismissed on 19. 10. 1994 as the Court was not satisfied with the evidence adduced at the ex-parte trial by the 1st respondent. No appeal was filed by the 1st respondent against that order of dismissal.

The 1st respondent filed her answer on 11. 10. 1995 and thereafter filed an application to add the 2nd respondent as a necessary party to the present action. This was allowed by the District Judge (D). The 2nd respondent filed an application by way of Revision and an application for leave to appeal against the said order of the District Judge (E). The Revision application and the leave to appeal application were taken together for hearing by the Court of Appeal; the Court of Appeal dismissed the Revision application and refused to grant leave to appeal (G). The appellant and the 2nd respondent each was ordered to pay the 1st respondent, Rs. 10,500/- as costs of the said two applications:

From that judgment of the Court of Appeal, special leave to appeal was granted by this Court on the following questions:

i. the finding of the Court of Appeal that the judgment entered in case No. 416/L, instituted by the 1st respondent, cannot operate as a bar against the 1st respondent's claim in reconvention, is wrong in law;

ii. in arriving at the said finding that the said judgment in case No. 416/L is not "res-judicata" against the claim of the 1st respondent made in the present case, the Court of Appeal has not considered the provisions of section 34(2)

of the Civil Procedure Code and hence the finding of the Court of Appeal is erroneous;

iii. the said order of the Court of Appeal is wrong, in that, the 2nd respondent is not a necessary party to be added in terms of section 18(1) of the Civil Procedure Code;

iv. the order made for payment of costs of Rs. 10,500/- by the appellant is unjust and erroneous.

At the hearing of this appeal we invited learned counsel for the parties to confine themselves to the limited question as to whether the 2nd respondent should have been added as a necessary party or not under section 18 of the Civil Procedure Code. We also indicated that the views expressed by the Court of Appeal, both on fact and law, on extraneous matters will be quashed by us.

Section 18(1) of the Civil Procedure Code, reads as follows:

> "The Court may on or before the hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out; and the Court may at any time, either upon or without such application and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, 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 that action, be added."

Addition of parties in pending civil proceedings, has been subjected to close scrutiny in several local decisions and perhaps, the most illuminating of those judgments is that of Ranasinghe, J., (as he then was) in the case of *Arumugam Coomaraswamy v. Andiris Appuhamy and others*[1]. In considering the applicability of section 18(1) of the Civil

Procedure Code, Ranasinghe, J., having carefully considered the Rules of the Supreme Court of England and several decisions both local and English, was constrained to choose between two strands of English decisions, labelled by Devlin, J., in *Amon v. Raphael Tuck and Sons Ltd.*[2] as the 'narrower construction' and the 'wider construction'. The narrower construction is best reflected in the case of *Norris v. Beazley*[3], in the words of Lord Coleridge, Cj., as follows:

> "It seems to me to be correctly argued that those words plainly imply that the defendant to be added must be a defendant against whom the plaintiff has some cause of complaint which ought to be determined in the action, and that it was never intended to apply where the person added as a defendant is a person against whom the plaintiff has no claim and does not desire to prosecute any."

It would be appropriate, in relation to the facts of the present case, to substitute the word 'defendant' wherever the word "plaintiff' appears in the above statement.

The 'wider construction' was expounded by Lord Esher in the case of *Byrne v. Browne and Diplock*[4] in the following terms:

> "One of the chief objects of the Judicature Act was to secure that, whenever a Court can see in the transaction brought before it that rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main evidence and the main inquiry will be the same, and the Court then has the power to bring in the new parties and adjudicate in one proceeding upon the rights of all

parties before it. Another great object was to diminish the cost of litigation. That being so, the Court ought to give the largest construction to those acts in order to carry out as far as possible the two objects I have mentioned."

After an exhaustive examination of the English and local authorities on the subject, Ranasinghe, J., was of the view that,

"On a consideration of the respective views . . . which have been expressed by the English Courts in regard to the nature and the extent of the construction to be placed upon the rule regulating the addition of a person as a party to a proceeding which is already pending in Court between two parties, the "wider construction" placed upon it by Lord Esher, which has been set out above commends itself to me. The grounds which moved Lord Esher to take a broad view, viz: to avoid a multiplicity of action and to diminish the cost of litigation, seem to me, with respect, to be eminently reasonable and extremely substantial. Lord Esher's view though given expression to almost a century ago, is, even to-day, as constructive and as acceptable (emphasis added) (supra Pg. 229).

Learned President's Counsel for the appellant correctly submitted that the 1st respondent's application to add the 2nd respondent, as a party necessary for the proceedings, was based upon the transfer made by the 2nd respondent bearing No. 420 dated 18. 02. 1985. After the said transfer, the 2nd respondent had entered into an agreement (No. 421 dated 18. 02. 1985 (A2)) with the 1st respondent's nephew. By this agreement the vendee was given time till 18. 02. 1988 to pay a sum of Rs. 73,150/- in 36 instalments of Rs. 2031/95 and to purchase the said property. It was agreed in terms of clause 17 of that agreement, that in the event of the vendee's failure to pay any 3 instalments referred to above and/or his committing a breach of any term or condition thereof, the agreement became 'ipso facto' terminated and void, without

any notice. Thereafter the appellant purchased the property in question by Deed No. 1117 executed on the same day.

It was contended for the appellant that the 2nd respondent is not a necessary party for the Court to determine the general disputes which have arisen in this case; if at all, a representative of the 2nd respondent may be a necessary witness for the 1st respondent. It was submitted on behalf of the 1st respondent that the 2nd respondent and the appellant have acted together fraudulently in connection with the land in dispute; that the documents on which the 2nd respondent obtained the signature of the 1st respondent on 18. 02. 1985 are not what they purport to be. The 1st respondent denies that she ever parted with the legal title to the land in dispute. It was submitted that the circumstances of the case demanded an investigation by Court, of the conduct of the 2nd respondent, which affected the rights of the parties to the case.

In order to avoid multiplicity of actions and to diminish the cost of litigation as pointed out by Ranasinghe, J., in Arumugam Coomaraswamy's case(Supra), and for the effective and complete adjudication and settlement of all questions involved in this case, the learned Trial Judge was correct when he made the order to add the 2nd respondent as a party defendant.

We dismiss the appeal and affirm the order made by the District Court dated 07. 10. 1997. As regards the judgment of the Court of Appeal dated 01. 04. 1999, we affirm that part of the judgment relating to the addition of the 2nd respondent as a party and costs. All other matters of fact and law referred to in the judgment of the Court of Appeal are quashed. In the circumstances of this case, we make no order as regards costs of the appeal. We direct the District Court to proceed with the main action as expeditiously as possible.

DHEERARATNE, J. - I agree.

WIJETUNGA, J. - I agree.

Appeal Dismissed; subject to a qualification.