1945 *Present:* **Keuneman and Rose JJ.**

ROCHE *et al.*, Appellants, *and* **KEERTHIRATNE** *et al.*, Respondents.

56—D. C. (Inty.), Ratnapura, 7,409.

Joinder of parties and causes of action—Action for declaration of title to Crown land—Agreement by Settlement Officer to sell land to plaintiff's predecessor—Sale of land to defendant pending settlement—Transfer of land to plaintiff after settlement Order—Allegations of fraud and conspiracy against plaintiffs—Defendant's counter claim—Civil Procedure Code, s. 18.

Plaintiffs instituted this action for declaration of title to land, which was originally Crown and was settled on the 1st added party in 1941 from whom title passed to the plaintiffs through the 2nd added party.

Defendant in her answer stated that under an agreement dated September, 1931, between the 1st added party and the Settlement Officer the former was declared the purchaser of the property on the payment of a sum of money, which was duly paid in 1935; and that thereafter in May, 1938, 1st added party sold the property to certain other persons from whom the defendant purchased in 1941. The defendant pleaded that on the publication of the settlement order all the rights thereunder enured to her benefit and that the deeds mentioned in the plaint had been executed in fraud and collusion in pursuance of a conspiracy between the plaintiffs, the 1st and 2nd added parties and that the plaintiffs and 2nd added party were mere nominees of the 1st added party. The defendant moved that the 1st and 2nd added parties be joined in the action and claimed—

(a) that the plaintiff's action be dismissed and that the defendant be declared entitled to the land or in the alternative

(b) that the plaintiffs and 1st added party be ordered to execute a conveyance in her favour of the said premises or to pay damages.

Held, that there was no misjoinder of parties and causes of action.

APPEAL from a judgment of the District Judge of Ratnapura. The facts appear from the head note.

E. B. Wikramanayake for the plaintiffs, appellants.—All the parties in this case are not jointly interested in each of the causes of action. The addition of Dassanaike and Tennekoon as parties is not justified by section 18 of the Civil Procedure Code and is prejudicial to the plaintiff. In consequence of their addition three actions have been joined in the same suit, namely, (1) an action for declaration of title to land, (2) an action relating to a trust and (3) an action for damages. In the answer of the defendant the same relief is not claimed against each of the parties. There has been a misjoinder of parties and causes of action. The case of *Fernando et al. v. Fernando* [1] is directly in point. See also *Olagappa Chettiar v. Reith* [2]; *Sivakaminathan v. Anthony* [3]; *Kanagasabapathy v. Kanagasabai et. al.*[4].

[1] *(1937) 39 N. L. R. 145.*
[2] *(1941) 43 N. L. R. 91.*
[3] *(1935) 3 C. L. W. 51.*
[4] *(1923) 25 N. L. R. 173.*

H. V. Perera, K.C. (with him *U. A. Jayasundera*), for the defendant, respondent.—The test is not what reliefs the defendant claims against the different parties but what cause of action he has. In order to establish his allegation of fraud and conspiracy the two added parties have to be, and can be rightly, joined. The defendant's answer discloses both a defence and a counter-claim. On the counter-claim the added parties were rightly brought in—*Haramanis v. Haramanis* [1]. In *Fernando et. al. v. Fernando* (*supra*) there were two independent causes of action, but in the present case the two causes of action are alternative. In *Hall v. Pelmadulla Valley Tea and Rubber Co., Ltd., et al.*[2] the position was similar to the one in the present case but no objection of misjoinder was raised. Sections 18 and 33 of the Civil Procedure Code justify the addition of the two added parties.

E. B. Wikramanayake in reply cited *Palaniappa v. Saminathan et al.*[3].

Cur. adv. vult.

February 15, 1945. KEUNEMAN J.—

The plaintiffs brought this action for declaration of title to Tennehenyaya, alleging that it was originally the property of the Crown. They stated that the land was settled on Dassanaike, the 1st added party, by settlement order of October 17, 1941, and that Dassanaike sold the same to Tennekoon, the 2nd added party, by deed 1442 of 1942, and Tennekoon in his turn sold to the plaintiffs by deed 560 of 1943.

The defendant in her answer alleged that under Agreement of September 2, 1931, entered into between the Settlement Officer and Dassanaike, the latter was declared the purchaser of the premises in question on paying Rs. 400, which sum was paid on March 18, 1935, and that thereafter on May 16, 1938, Dassanaike sold by deed 2250 to Ellen and Aslin Keerthiratne, who by deed 1545 of October 26, 1939, sold to the partners of E. G. Adamally & Company, and they in their turn sold by deed 285 of May 9, 1941, to the defendant.

The defendant pleaded that on the publication of the settlement order referred to in the plaint all rights thereunder enured to the benefit of the defendant, who became entitled to the premises. For a further answer the defendant pleaded three matters—

(1) that the deeds mentioned in the plaint had been executed in fraud and collusion and without consideration in pursuance of a conspiracy between the plaintiffs, Dassanaike, and Tennekoon, wrongfully to deprive the defendant of her rights, and that Dassanaike retained the beneficial interest in the premises, which did not pass to the nominal transferees,

(2) that deed 2250 of 1938 from Dassanaike to the Keerthiratnes contained an agreement that Dassanaike would execute a further deed of conveyance or confirmation on the settlement order being granted. The defendant alleged that the deeds in his chain of title had been duly registered, and that he was entitled to enforce specific performance of the agreement against the plaintiffs by virtue of section 93 of the Trusts Ordinance;

[1] *(1907) 10 N. L. R. 332.* [2] *(1927) 28 N. L. R. 422.*
[3] *(1913) 17 N. L. R. 56 at 60.*

(3) that Dassanaike had been guilty of fraud and wilful suppression of facts in obtaining the settlement order, and that as the plaintiffs were mere nominees of his the defendant was entitled to be declared entitled to the premises in question, or in the alternative to recover damages assessed at Rs. 20,000 from Dassanaike and the plaintiffs.

In his prayer the defendant prayed (*a*) that the plaintiffs' action be dismissed with costs, and *in reconvention*.

(*b*) that defendant be declared entitled to the said premises; or *in the alternative*.

(*c*) that the plaintiffs and Dassanaike be ordered to execute a conveyance in her favour of the said premises or to pay Rs. 20,000 as damages.

Thereafter the defendant moved that Dassanaike and Tennekoon be added a parties to the action. The District Judge ordered that they should be so added, and the plaintiffs now appeal against that order.

In substance the plaintiffs assert that the court had not jurisdiction to add the parties in this case, and that the addition of the parties would result in a misjoinder of parties and of causes of action.

I do not think the plea that the court had no jurisdiction to add the parties can be maintained in view of the wide language of section 18 of the Civil Procedure Code. No doubt the court has a discretionary power to allow or refuse the addition of new parties, but in this case the District Judge has exercised his jurisdiction in favour of the addition of the parties.

The further point that the addition of the new parties would result in misjoinder of parties and causes of action requires close consideration. Counsel for the plaintiffs relies upon the finding of Hearne J. in *Fernando v. Fernando* [1] to the effect that " where there are two defendants and two causes of action, both defendants must be jointly interested in each of the two causes of action ". This view was also taken in *Kanagasabapathy v. Kanagasaba* [2]. Both these were two Judge cases. A different view was taken by the majority of a three Judge Court in the *London & Lancashire Fire Insurance Co. v. the P. & O. Co.*[3]. With respect, I am not, as at present advised, able to agree with Hearne J. that this last case should be treated as a two Judge decision, and it is possible that the matter still remains to be decided finally. But accepting the proposition in *Fernando v. Fernando* (*supra*) as correct, I have still to consider whether the added parties are necessary or at any rate proper parties to be joined as regards all the causes of action raised by the defendant.

For this purpose I think it is necessary to exclude from consideration the plea of the defendant contained in paragraph 6 of the answer. That is only an answer to plaintiffs' claim, and if it is correct and succeeds it will result in the dismissal of plaintiffs action. The causes of action we have to consider are the three causes of action raised by the defendant in reconvention which I have set out earlier.

The first of these definitely charges the plaintiffs and Dassanaike and Tennekoon with fraud and collusion in pursuance of a conspiracy, and asserts that Tennekoon and the plaintiffs are merely nominal transferees

[1] *39 N. L. R. 145.* [2] *25 N. L. R. 173.*
[3] *18 N. L. R. 15.*

from Dassanaike who retained the beneficial interest in the premises. I think it is eminently proper, in view of the charges of fraud, collusion and conspiracy against all these parties, that they should be joined, and counsel has been unable to show that any prejudice would result to the plaintiffs by their addition. In this connection I may refer to the case of *Haramanis v. Haramanis* [1] where, in an action under section 247 of the Civil Procedure Code in which there was an allegation that the deed of transfer to the defendant had been executed in fraud of creditors, it was held that the grantor to the defendant should be joined as a party, and where he was not already joined the court may add him as a party under section 18 of the Code.

As regards the second of the causes of action, the defendant claims specific performance of a subsidiary agreement in the deed 2250. I think it is proper that Dassanaike, the vendor under that deed, should be made a party in respect of this plea, and the subsequent transferees from Dassanaike, viz., Tennekoon and the plaintiffs are also proper parties. Counsel for the respondent has cited at least one instance where, on a plea under section 93 of the Trust Ordinance, both the contracting party and his subsequent transferee have been joined as parties. It is true that no objection was taken in this instance that there had been a misjoinder of causes of action. On the other hand counsel for the appellant has not cited any authority to show that in such a case there would be a misjoinder of causes of action, and on principle I am unable to agree that there would be misjoinder in such a case.

The third cause of action charges Dassanaike with fraud in obtaining the settlement order, and alleges that the plaintiffs are mere nominees of Dassanaike. I think this should be read in conjunction with the first cause of action in which there is an allegation that Tennekoon is also a mere nominee of Dassanaike. In my opinion both Dassanaike and Tennekoon are proper parties to be added in respect of this plea. It is true that relief is only claimed under this cause of action and in the prayer against Dassanaike and the plaintiffs, but I do not think that affects the question.

I am therefore of opinion that the District Judge had jurisdiction to add Dassanaike and Tennekoon under section 18 of the Code, and that the addition of these parties will not result in a misjoinder of causes of action or be obnoxious to the sections of the Civil Procedure Code. I need only add that I have decided the matter entirely on the pleadings. In the course of the proceedings the District Judge may or may not hold that the defendant has succeeded on any or all of his pleas, and the District Judge may have to distinguish between the various parties on the question of their liability, but those are matters which do not arise at this stage.

The appeal is dismissed. The plaintiffs will pay the costs of this appeal to the defendant.

ROSE J.—I agree.

Appeal dismissed.

[1] *10 N. L. R. 333.*