
DORIS SIRIWARDANE AND OTHERS
VS
DE SILVA

COURT OF APPEAL.
EKANAYAKE, J.
CALA 27/2003 (LG).
DC COLOMBO 369/TRUST.
FEBRUARY 27, 2006.

Civil Procedure Code, sections 18 and 839 — Could the plaintiff add a new party by an amended plaint? — Applicability of section 839 — Inherent powers of Court — Can it override the express provisions of the Code?

The plaintiff respondent instituted action and sought a declaration that the 1st and 2nd defendants are holding the property in trust for the plaintiff and an order directing the 1st and 2nd defendants to execute a deed transferring the property to the plaintiff. The 1st and 2nd defendant appellants moved for a dismissal of the action.

Before the case was fixed for trial the plaintiff sought to amend the plaint and add 3rd, 4th and 5th defendants and sought a declaration that the 1st and 2nd defendants and 3rd, 4th and 5th defendants hold the said property in trust for the plaintiff. The trial court accepted the amendment.

HELD:

- (1) The plaintiff could not add new parties by an amended plaint when specific provisions are provided by the Code for addition of parties – section 18.
- (2) No party can succeed in getting a relief which is not prayed for in the prayer-in this case relief of addition of parties has not been prayed for.
- (3) Section 839 is not intended to authorize a court to override the express provisions of the Code.
- (4) Court should not have granted relief of addition of parties when the plaintiff had specifically acted contrary to the specific provisions laid down – Section 18.

APPLICATION for leave to appeal with leave being granted from an order of the District Court of Colombo.

Cases referred to :

1. *Kamala vs. Andiris* 41 NLR 71

2. *Lechman Company Ltd. vs. Rangalle Consolidated Ltd.* 1981 2 Sri LR – 373

S. A. Parathalingam, PC with Faizer Musthapha and Ms Amrisha Parathalingam for 1st and 2nd defendant-petitioner.

M. A. Sumanthiran for plaintiff-respondent.

Cur.adv.vult.

July 14, 2006.

CHANDRA EKANAYAKE, J.

The 1st and 2nd defendant-petitioners (hereinafter some times referred to as the 1st and 2nd defendants) by their petition dated 27.01.2003 (supported by an affidavit) had sought leave to appeal against the order of the learned District Judge of Colombo dated 07.01.2003 (X13) to set aside the same and to refuse the plaintiff-respondent's application to amend the plaint. The plaintiff-respondent (hereinafter sometimes referred to as the plaintiff) had instituted action bearing No. 369/Trust in the District Court of Colombo against the 1st to 3rd defendants. By the plaint dated 06.08.98 the plaintiff had sought the following main reliefs (in addition to the other interim reliefs) *inter alia* against the 1st and 2nd defendants who are her parents :

- (a) a declaration that the 1st and 2nd defendants are holding the property in trust for the plaintiff,
- (b) an order directing the 1st and 2nd defendants to execute the deed transferring the said property to the plaintiff.

The 1st and 2nd defendants by their joint answer dated 02.10.98 had moved for a dismissal of the plaintiff's action. Thereafter before the case was fixed for trial the plaintiff had filed a draft amended plaint dated 05.03.2001(X8) with a motion dated 30.03.2001(X7) seeking *inter alia* :

- (a) a declaration that the 1st and 2nd defendants and the 3rd, 4th, 5th added defendants hold the said property morefully described in the schedule thereto in trust for the plaintiff,

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- (b) a declaration that the granting of a license to the 7th added defendant by deed No. 1073 dated 05.06.98 attested by V. A. Samararatne N. P. is null and void and of no force or effect in law.
- (c) a declaration that the reservation of life interest to themselves and to the 7th added defendant by deed No. 1080 dated June, 1998 attested by V. A. Samararatne N. P. is null and void and of no force or effect in law.

In the aforesaid amended plaint Himali de Silva and Rekha de Silva (two daughters of the plaintiff), Dharmin Perera — Guardian-ad-litem for the minor 5th defendant and Ray de Silva (husband of the plaintiff) were named as 4th, 5th, 6th and 7th added defendants respectively. It has to be noted there was no relief for addition of 4th to 7th added defendants.

When the application to amend the plaint as aforesaid was objected to by the defendants after an inquiry the learned Judge by the impugned order dated 07.01.2003 (X13) had accepted the aforesaid amended plaint. This leave to appeal application was preferred from this order.

This Court by its order dated 19.10.2004 had granted leave to appeal on the correctness of the order of the learned District Judge accepting the amended plaint.

It was contended by the Counsel for the plaintiff that the plaintiff became aware of the execution of two deeds (D4 and D5) transferring the property in question which was said to have been held in trust in favour of the plaintiff by the 1st and 2nd defendants, to the two daughters of the plaintiff who were named as 4th and 5th added defendants in the caption of the amended plaint and granting license to the party named as 7th added defendant who is the husband of the plaintiff over the property in question. Further it was contended although the above two deeds bear the date 01.08.98 at the time of filing of this action (06.08.98) there was no record of registration of such deeds at the Land Registry. In those circumstances the plaintiff's position was that due to purported transfers and the granting of license by the aforesaid deeds marked D4 and D5 the necessity has arisen to add the two daughters and her husband as 4th, 5th and 7th added defendants.

The application to amend the plaint had been made before the day first fixed for trial. What arises for consideration now is whether the plaintiff could add new parties by an amended plaint when specific provisions have been provided by the Civil Procedure Code for addition of parties viz. section 18. On a consideration of the impugned order it is seen that the learned trial Judge had accepted the amended plaint and had allowed 4th to 7th defendants also to be added as parties. By the amended plaint the plaintiff had not sought relief of addition of 4th to 7th defendants. The basis of the learned Judge's finding is that it is not unreasonable to accept the aforesaid amended plaint.

The main question that arises for consideration now is whether the plaintiff can move for reliefs against parties who are not added as defendants in the case - viz. against 4, 5 and 7th defendants. Furthermore it has to be noted that without making them parties the plaintiff cannot claim any relief against them. Next comes to my mind whether the reliefs which are not prayed for (to wit – adding them as parties to the action) could be granted by the trial Judge. No party can succeed in getting a relief which is not prayed for in the prayer – in this case the relief of addition of parties has not been prayed for.

When specific provisions are provided by section 18 of the Civil Procedure Code a party (here the plaintiff) cannot overlook the same and ask for various reliefs against those who are not so far added as defendants in the case. In the instant case the plaintiff having totally failed to exhaust the above remedy had proceeded to name them as 4 to 7 defendants in the amended plaint and moved for various reliefs against them. In this regard it would be pertinent to consider the decision in the case of *Kamala vs. Andiris*⁽¹⁾; where it was held that "Section 839 of the Civil Procedure Code is not intended to authorize a Court to override the express provisions of the Civil Procedure Code". Further' text of the decision in *Leechman Company Limited vs. Rangalla Consolidated Limited*⁽²⁾ too would be of assistance in this regard. In the above case this Court has stated as follows:

"..... this section (839) merely saves the inherent powers to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the court. Where no provisions exist it is the duty of the Judge and it lies within his inherent power to make such order as the justice of the case requires"

Section 839 of the Civil Procedure Code is to the following effect :

“Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

Perusal of the impugned order reveals that the basis of the finding to accept the amended plaintiff had been since it was evident from the material available that there was a dispute among the parties in relation to the property in question and if the amendment was not allowed the case of the plaintiff would collapse and it would be equivalent to a dismissal of the plaintiff. Next consideration of the trial Judge had been if the plaintiff is dismissed the plaintiff should be permitted to file a new plaintiff which would cause expenditure to both parties. By doing so the learned Judge has failed to consider whether the amended plaintiff could be accepted specially when there had been no previous order to add 4 to 7 defendants as added defendants. On the other hand when there had been no relief claimed by the plaintiff to add 4 to 7 defendants, learned Judge should not have allowed such a relief which was not prayed at all. Secondly, the learned Judge should not have granted the relief of addition of parties when the plaintiff had specifically acted contrary to the specific provisions laid down for addition of parties in section 18 of the Civil Procedure Code. In view of the authorities cited above in any event the learned Judge could not have made the said order even acting under inherent powers of court due to the reason that specific provisions have been laid down by section 18 of the Code. In those circumstances I conclude that learned trial Judge had erred when she made the impugned order and therefore the order dated 7.1.2003 has to be set aside and the amended plaintiff has to be rejected.

For the foregoing reasons the impugned order dated 7.1.2003 is hereby set aside and the amended plaintiff is rejected. The appeal is allowed with costs fixed at Rs. 7,500.

Appeal allowed.