MACKIE & SONS
v.
MACKIE & ANOTHER

COURT OF APPEAL.
DE SILVA, J.,
JAYAWICKREMA, J.
CALA NO. 158/90.
DC COLOMBO NO. 15619/MB.
OCTOBER 29, 1998.
NOVEMBER 30, 1998.
JULY 14, 1999.

Civil Procedure Code S. 14, S. 18 – Addition of a party.

The plaintiff-respondent filed action seeking a declaration that Mortgage Bond No. 88 is null and void and the property is not subject to mortgage. The defendant-petitioner prayed for the rectification of the Bond. The trial was fixed for 26.1.90, the defendant moved to add the petitioner as a party, which was allowed by the District Court.

It was contended that, the addition would result in misjoinder.

Held:

(1) S.14 – deals with a situation where the plaintiff institutes an action against persons who are liable to be sued as defendants.

S.18 – deals with a situation where the presence of any party may be necessary to effectually and completely adjudicate upon and settle all questions involved in the action.

(2) If the petitioner is not added as a party a separate action will have to be filed against the petitioner and the plaintiff with respect to the very same relief, viz the rectification of the Mortgage Bond. Once the petitioner is added the question whether the Mortgage Bond should be rectified or not can be determined once and for all in one action without having to bring a separate action.

APPLICATION for Leave to Appeal from the Order of the District Court, Colombo.

Cases referred to:

1. *Arumugam Coomaraswamy v. Andris Appuhamy and Others* – [1985] 2 Sri L.R. 219.
2. *Chartered Bank v. L. N. de Silva* – 67 NLR 135.

Faiz Musthapha, PC with *Harsha Ameresekera* for 2nd defendant-petitioner.

Chula de Silva,, PC with *M. Gunasekera* and *M. Mahroof* for respondents.

Cur. adv. vult.

September 23, 1999.

DE SILVA, J.

This is an appeal from an order made by the learned District Judge permitting an application by the defendant-respondent (hereinafter referred to as defendant) to add the petitioner as a party to this action.

The relevant facts are as follows : The plaintiff-respondent (hereinafter referred to as the plaintiff) filed action seeking a declaration that Mortgage Bond No. 88 is null and void and that the property referred to therein is not subject to any mortgage and for an order cancelling and setting aside the registration of the said Bond.

The position taken up by the plaintiff was that the sum referred to in the bond was never lent and advanced to her by the defendant and that there is no debt due from the plaintiff to the defendant.

The plaintiff alleged that the defendant company granted financial facilities to the party sought to be added, namely H. M. S. Mackie Sons (Pvt) Ltd., and the said company received the said financial facilities.

The defendant's position as set out in the answer is that the company sought to be added is a private company, owned, controlled and managed by the plaintiff and her immediate members of the family.

The defendant has contended that the petitioner company acting through its directors, inclusive of the plaintiff requested financial facilities from the defendant and offered as security the said premises and that the plaintiff executed the said Mortgage Bond as security for monies to be lent and advanced to the said company.

The defendant has used a standard printed Bond and the format has not been changed to state that the security by way of mortgage is being offered for financial facilities given to the company and not to the plaintiff.

In the answer the defendant has prayed to rectify the errors and has also stated that once the rectification is effected in addition to the plaintiff the defendant will be entitled to sue the petitioner company.

Issues were raised on 06.10.1989 and trial was fixed for 26.01.1990. Thereafter, the defendant moved to add the petitioner, as a party to the action. Objection was taken up and the learned District Judge by his order dated 12.10.1990 allowed the application to add the petitioner company as a party. This appeal is against the said order of the learned District Judge.

Counsel for the appellant submitted that the order of the learned District Judge is erroneous for two reasons, namely –

(*a*) that the instant case does not come within the "broader principle" regarding addition of parties enunciated in *Arumugam Coomaraswamy's* case[1].

(*b*) in any event as no relief has been claimed against the present petitioner, the addition of the petitioner would result in misjoinder.

Counsel submitted that section 14 of the Civil Procedure Code permits a joinder only of defendants in respect of whom a right to relief is alleged to exist whether jointly, severally or in the alternative in respect of the same cause of action. It was the contention of the

counsel that what is sought in the instant case is a rectification of the Mortgage Bond which is a contract entered into between the plaintiff and the defendant. In support of this contention counsel for the petitioner cited the decision *Chartered Bank v. L. N. de Silva*[2].

It is to be noted that section 14 deals with a situation where the plaintiff institutes an action against persons who are liable to be sued as defendants. This is clear from the scheme of the Civil Procedure Code and the wordings of section 14.

Section 18 of the Civil Procedure Code deals with a wider situation. It deals with the situation where the presence of any party may be necessary to effectually and completely adjudicate upon and settle all questions involved in the action.

The facts in the *Chartered Bank* case (*supra*) have no similarity to the facts of the present case. In that case, a guarantor who had settled the liability of the defendant to a Bank filed action against the debtor. The question that arose for decision was whether the Bank should be made a defendant to completely and effectively adjudicate upon all matters involved. The relief sought did not affect the party sought to be added.

In *Arumugam Coomaraswamy v. Andiris Appuhamy (supra)* at 219 the Supreme Court laid down several situations in which a party is liable to be added.

The head note reads as follows: "In deciding whether the addition of a new party should be allowed under section 18 (1) of the Civil Procedure Code the wider construction adopted by English courts is to be preferred. Whenever a court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that other actions may be brought in respect of that transaction the court has the power to bring all the parties before it and determine the rights of all in one proceeding. It is not necesary that the evidence on 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. Even if the narrower construction is adopted a person who has to be bound by the result of the action, or has a legal right enforceable by him against one of the parties to the action which will be affected by the result of the action should be joined; so also where the question raised by the party seeking to be added is so inextricably mixed with the matters in dispute as to be inseparable from them and the action itself cannot be decided without deciding it, then the addition should be made; if the plaintiff can show that he cannot get effectual and complete relief unless the new party is joined or a defendant can show that he cannot effectually set up a defence which he desires to set up unless the new party is joined, the addition should be allowed".

In the instant case if the petitioner is not added as a party then a separate action will have to be filed against the petitioner and the plaintiff with respect to the very same relief, namely the rectification of the Mortgage Bond. Once the petitioner is added as a party, the question whether the Mortgage Bond should be rectified or not can be determined once and for all in one action without having to bring a separate action.

In these circumstances we see no reason to interfere with the order of the learned District Judge. This appeal is dismissed with costs.

JAYAWICKREMA, J. – I agree.

Appeal dismissed.