

1970

Present : H. N. G. Fernando, C.J.

T. V. SIRIWARDENE, Appellant, and Mrs. J. WIJENAIKE,
Respondent

S. C. 186/67—C. R. Kalutara, 5927

Appeal—Action under s. 236 of Municipal Councils Ordinance (Cap. 252)—Addition, at stage of appeal, of a necessary party for formal purposes—Permissibility—Scope of s. 770 of Civil Procedure Code.

Where, in an appeal in an action instituted under section 236 of the Municipal Councils Ordinance, a necessary party was not made party respondent—

Held, that recourse could be had to section 770 of the Civil Procedure Code in order to add the party for formal purposes.

Per FERNANDO, C.J.—“Although sub-section (4) of Section 236 of the Municipal Councils Ordinance provides only that appeals under that section shall be governed by the provisions of Chapter 58 of the Civil Procedure Code, it is manifest that recourse may be had to other provisions of the Code; for otherwise such important sections as are contained in Chapters 59, 60, and 61 of the Code will not apply to appeals from a Court of Requests. Although provisions like Section 770 are not applicable by the force of statute, I hold that recourse to such provisions is permissible in the absence of any express provisions.”

APPEAL from a judgment of the Court of Requests, Kalutara.

Walter Jayawardena, Q.C., with *L. T. Andradi*, for the defendant-appellant.

H. W. Jayewardene, Q.C., with *L. C. Seneviratne*, for the plaintiff-respondent.

June 20, 1970. H. N. G. FERNANDO, C.J.—

This is an appeal in an action filed under section 236 of the Municipal Councils Ordinance in which the plaintiff prayed for the increase of the assessment of the annual value of premises situated within the limits of an Urban Council. The Council and his tenant were both parties to the action.

At the commencement of the trial, the Proctor appearing for the Council informed the Court that the Council will not be contesting the case of the plaintiff because if the Court holds with the plaintiff the Council would definitely stand to gain.

The Council took no further part at the trial.

The learned Commissioner made order increasing the assessment of the premises, and the tenant has appealed to this Court. He has, however, failed to make the Council a party.

Mr. H. W. Jayewardene has rightly pointed out that if the appeal is successful the decree of this Court will not bind the Council since it has not been a party to the appeal.

The only question therefore is whether under section 770 of the Civil Procedure Code the Council may now be joined. Although sub-section (4) of Section 236 of the Municipal Councils Ordinance provides only that appeals under that section shall be governed by the provisions of Chapter 58 of the Civil Procedure Code, it is manifest that recourse may be had to other provisions of the Code ; for otherwise such important sections as are contained in Chapters 59, 60, and 61 of the Code will not apply to appeals from a Court of Requests. Although provisions like Section 770 are not applicable by the force of statute, I hold that recourse to such provisions is permissible in the absence of any express provisions.

The test laid down in the case of *Ibrahim v. Beebee at al.*' (19 N. L. R. 289) is that the power of addition under section 770 should be exercised unless the defect is not one of an obvious character which could not reasonably have been foreseen and avoided.

It seems to me that in the instant case the tenant and his advisors could well have thought that because the Council left it to the plaintiff and the tenant to fight out the dispute as to the assessment, the Council would equally have remained silent at the hearing of the appeal. Logically that would seem to be the proper attitude for the Council even if joined as a party. Nevertheless, as I have already said, the joinder of the Council is necessary at least for formal purposes.

I accordingly allow the appellant's application that the Urban Council of Kalutara be added as a party-respondent to this appeal. This order however is conditional upon the deposit in this Court to the credit of the plaintiff of a sum of Rs. 250 as the costs of the past proceedings in this Court.

Preliminary objection overruled.
