1959 *Present:* **Basnayake, C.J., and Sansoni, J.**

V. PONNUTHURAI *et al.*, Appellants, *and* N. B. JUHAR *et al.*, Respondents

S. C. 145 A–B—D. C. Trincomalee, 5170

Rei vindicatio ***action—Addition of parties—Right of a third party to intervene pending action—Civil Procedure Code, ss. 17, 18, 79.***

If the plaintiff does not object, a third party should be allowed to intervene in a pending *rei vindicatio* action where he is not in possession of the land in dispute and seeks to obtain a declaration of title and consequential relief in his own favour.

APPEALS from a judgment of the District Court, Trincomalee.

E. R. S. R. Coomaraswamy, with *E. B. Vannitamby*, for 1st Defendant-Appellant in S. C. No. 145 A and for 2nd Defendant-Appellant in S. C. No. 145 B.

N. E. Weerasooria, Q.C., with *J. N. David*, for 3rd Defendant-Respondent in both appeals.

M. I. M. Cassim, with *M. T. M. Sivardeen*, for Plaintiff-Respondent in both appeals.

Cur. adv. vult.

December 21, 1959. SANSONI, J.—

These are two connected appeals from an order allowing the 3rd defendant-respondent to intervene in an action between the plaintiff and the 1st and 2nd defendants-appellants. The plaintiff sued for a declaration of title to a particular land, tracing title from one Meera Lebbai Tampi who is said to have died leaving the plaintiff as his sole heir. He pleaded that the first defendant asserted title to the land in February 1956 and transferred the land to the 2nd defendant. He claimed a declaration of title, ejectment, and restoration of himself to possession.

The first defendant in his amended answer set out a different chain of title, and ultimately pleaded a purchase by him from one Wellawattage Gunawardene Dissanayake upon deed No. 646 dated 14th November 1955. The second defendant pleaded a purchase by him for valuable consideration, presumably from the first defendant though he does not expressly say so. He also pleaded that he was not a necessary party and that no decree obtained by the plaintiff can bind him, though he gave no reasons for this strange plea.

After the case had been fixed for trial, the intervenient filed a statement of claim setting out his title which ends with a purchase by him on deed No. 11648 dated 21st November 1928. He attacked deed No. 646 dated

14th November 1955 as a false document, and pleaded that he was the owner of the land. He claimed that the 2nd defendant had, since his alleged purchase, cut down trees on the land to the value of Rs. 5,000. In his prayer he asked that he be added as a party, that he be declared entitled to the land, that the defendants be ejected from it and he be placed in quiet possession, and for damages in Rs. 5,000. In view of certain observations I shall make, it is important to remember at this stage that the plaintiff neither consented nor objected to the intervention, though both defendants objected to it. After inquiry, the learned judge allowed the intervenient's application and directed that he be added as the 3rd defendant. It is from this order that the appeals have been taken.

It was pointed out as far back as 1895 in *Meideen v. Banda*[1] that the language of Section 18 of the Civil Procedure Code corresponds with the language of Order 16 Rule 11 of the Rules of the Supreme Court of England, and both in that case and in later cases guidance has been sought from English decisions where similar questions arose for decision. Order 16 Rule 11 reads : " No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, 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 the cause or matter, be added." The rest of the rule need not be quoted as it does not affect the present matter. The relevant provisions of Sections 17 and 18 of the Code read :

" 17. No action shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

If the consent of any one who ought to be joined as a plaintiff cannot be obtained, he may be made a defendant, the reasons therefor being stated in the plaint."

" 18. (1) 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

[1] *(1895) 1 N. L. R. page 51.*

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 the action, be added."

It is not feasible to consider in detail the many local decisions dealing with the subject of addition of parties, nor is it easy to extract any guiding principles from them as each case seems to have been decided on its particular facts. The question that arises on the present appeals is this : the plaintiff not objecting, can a third party claim to intervene in a pending *rei vindicatio* action where he proposes to obtain a declaration of title and consequer tial relief in his own favour ? I shall first consider the matter as though the plaintiff had objected to the intervention. The answer would have then depended on the meaning one gives to the words " any person 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 the action " for obviously the intervenient in this case is not a person who " ought to have been joined ".

The English rule has been closely analysed in a learned judgment by Devlin J. in *Amon v. Raphael Tuck and Sons Ltd.*[1], which was a case where the plaintiff opposed the intervention. The judgment was followed and applied by Willmer J. in *Miguel Sanchez and Co. v. The Result*[2]. Devlin J. reviewed all the authorities and pointed out that two views had been expressed on the meaning of the words in question. The broader view is that the court has a wide discretionary power to join any person who has a claim to the subject matter of the action, for such a person can urge that the question involved in his cause of action cannot be settled without joining him. Thus if the subject matter of the action is the ownership of movable or immovable property, such a person should be allowed to come in and put forward his claim to it. The narrower view emphasises that the presence of the intervenient must be necessary for the prescribed purpose of deciding and settling questions involved in the action as it stands between the existing parties. On this view, the test whether a person should be added or not becomes a matter of jurisdiction and not of discretion. The following words of Lindley L.J. in *Moser v. Marsden*[3] were quoted by Devlin J. as furnishing a clue to the solution of the problem : " In order to properly understand the rule we must look at the whole of it. It begins by saying 'No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties '—that is the key to the whole question : If the court cannot decide the question without the presence of other parties, the cause is not to be defeated, but the parties are to be added so as to put the proper parties before the court." Ultimately the narrower

[1] *(1956) 1 Q. B. 357.* [2] *(1958) 2 W. L. R. 725.*

[3] *(1892) 1 Ch. 487.*

construction of the rule was adopted by Devlin J. who laid down the test to determine whether an intervention should be allowed when the plaintiff objects to it as being: "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?". The rule was regarded as giving effect to the practice in equity, which was to join as parties all those whose presence was necessary to complete and effectual justice, as compared with the common law practice, which was to join only parties who should have been joined, such as joint contractors.

If this test were to be applied to the present action, but still on the basis that the plaintiff had objected, I think that the application for intervention would fail. The intervenient will not be affected in the enjoyment of his legal rights by any judgment that may be given in the action between the plaintiff and the 1st and 2nd defendants. I would stress the point that the intervenient does not claim that he is now in possession of the land in dispute, for in his prayer he asks that the plaintiff and the defendants be ejected. Execution of a decree for possession which the plaintiff may obtain would therefore not have affected him. But what is the position where, as in this case, the plaintiff does not object to the intervention? And in this instance I think that when the plaintiff does not object he may be taken to consent.

Devlin J. warned that the test laid down by him cannot be applied to every sort of application to join parties. He pointed out that he was not attempting to lay down, or holding that the authorities lay down, "a test of universal efficacy". If a plaintiff wants to add a defendant he will not have to show that the new defendant will be directly affected by an order in the action as then constituted, but only that he cannot get effectual and complete relief unless the new defendant is added. Similarly, where a defendant seeks to join a new defendant he need only show that he cannot effectually set up a defence which he wishes to set up unless the new defendant is joined or unless the order made binds the new defendant. He added: "It is not that the construction of the rule differs according to the circumstances. The construction of the rule is and must be the same in all circumstances; but the test that is appropriate to determine whether a party is necessary or not may vary according to the circumstances". Now in this action the plaintiff is *dominus litis*, and just as he cannot be compelled to fight a litigant not of his own choice if he objects to an intervenient coming into the case, I also think that where he does not object to the intervention, such intervention should be allowed unless there is something in the rule which forbids it. It may be that the plaintiff thinks that he will not get effectual and complete relief unless the intervention is allowed and the validity of the deed No. 646 dated 14th November 1955 is inquired into; or he may think that the issue of prescriptive possession would be most conveniently decided, from his point of view, in one action instead of two.

Counsel for the appellants objected that his clients would be hampered in pleading in reply to the claim put forward by the added party. I do not think that he need have any fears on this ground. Under Section 79 of the Code the court can allow further pleadings in order that the real issues between the parties may be raised, and if the answer filed by the added party requires it there should be no objection to amended pleadings being filed by the 1st and 2nd defendants in order to meet that answer.

I would therefore dismiss these appeals with costs.

BASNAYAKE, C.J.—I agree.

Appeals dismissed.