

1954

Present : Weerasooriya J. and de Silva J.

SINNATHAMBY *et al.*, Appellants, and KANDIAH *et al.*,
Respondents

S. C. 42—D. C. (Inty.) Chavakachcheri, 261

Civil Procedure Code—Necessary party—Refusal to join in action—Duty of Court to add such party—Sections 17, 18 (1), 473.

Section 473 of the Civil Procedure Code provides that where there are several trustees they shall all be made parties to an action instituted by one or more of them. Hence, if one of them refuses to join in the action it is the duty of the Court, acting under section 18 (1), to add him as a party defendant.

APPEAL from an order of the District Court, Chavakachcheri.

C. Rengannathan, for the 1st and 2nd plaintiffs-appellants.

J. V. C. Nathaniel, for the 1st, 2nd, 3rd, 22nd, 24th, 26th–29th, 31st and 32nd defendants-respondents and the citee-respondent.

September 16, 1954. WEERASOORIYA J.—

The citee-respondent was originally joined as the 3rd plaintiff in this action on the basis that he and the other two plaintiffs are the duly appointed trustees of the Nellikinathaddy Kandaswamy Kovil at Mirusu-vil.

In the course of the proceedings in the lower Court it was discovered that the proxy filed by the proctor acting purportedly on behalf of all three plaintiffs had not been signed by the 2nd plaintiff and the citee-respondent. The 2nd plaintiff has since made good the omission by granting a proxy to the same proctor ratifying all acts done and authorising the proctor to act on his behalf. The citee-respondent has, however, refused to do likewise and the learned District Judge struck his name out of the plaint. With regard to the application of the 1st and 2nd plaintiffs that in the circumstances the citee-respondent be made a party defendant the learned District Judge stated that this could not be granted since it did not appear to be necessary and proper that the citee-respondent should be made a party defendant. From this order the 1st and 2nd plaintiffs have appealed.

S. 473 of the Civil Procedure Code provides that where there are several trustees they shall all be made parties to an action by one or more of them. Hence, even if (as a result of what has transpired) the action is regarded from its inception as having been filed by the 1st and 2nd plaintiffs alone, there was a non-joinder of a necessary party in the person of the citee-respondent which, however, in view of S. 17 of the Code, would not be a reason for defeating the action, and the remedy is to be found in S. 18 (1) which empowers the Court *inter alia* to add as a party the name of any person who ought to have been joined (in the first instance) whether as plaintiff or defendant.

While the exercise by the Court of the powers conferred under S. 18 (1) is discretionary, I am of the opinion that in this case the learned District Judge should, in view of the provisions of S. 473, have added the citee-respondent as a party defendant. The order of the learned District Judge is therefore set aside and the case is remitted to the lower Court so that the citee-respondent may be added as a party defendant and the action proceeded with thereafter according to law.

It was not urged before us by learned counsel who appeared for the respondents that the addition of the citee-respondent as a defendant would in any way be prejudicial to the rights of the respondents as at the date of the filing of the action.

The 1st, 2nd, 3rd, 22nd, 24th, 26th-29th, 31st, 32nd defendants and the citee-respondent will pay to the appellants the costs of this appeal and of the inquiry in the Court below.

DE SILVA J.—I agree.

Order set aside.