
(1958) 02 AHC CK 0034
In the Allahabad High Court
Case No : Civil Revision No. 481 of 1957

Capt. S.V. Daniels

APPELLANT

Vs

Gregory Warden Friendly Trust

RESPONDENT

Date of Decision : 21-02-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, Order 6 Rule 17

Citation : AIR 1959 All 579 : (1958) 28 AWR 537

Hon'ble Judges : A.P. Srivastava, J

Bench : Single Bench

Advocate : F. Gandhi, for the Appellant; S.S. Ali, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Srivastava, J.—This is a defendant's application in revision. The plaintiff is a trust known as The Gregory Warden Friendly Trust. There are two trustees of the trust: Mr. V. J. Seetal and Mr. P. Samuel Lal. The suit was filed by the trust through one of the trustees only, viz. Mr. V. J. Seetal. A plea was raised that the suit was defective inasmuch as the other trustee had not been impleaded. An application was thereupon made by the plaintiff that the other trustee, Sri P. Samuel Lal, be also allowed to be impleaded as a plaintiff.

An application with a similar prayer was made by Mr. P. Samuel Lal himself. Both these applications have been allowed by the learned Munsif and the defendant has come up in revision against that order. It is contended on his behalf that the suit having been filed through one of the trustees only, was not only defective but was no suit at all and the learned Munsif had no jurisdiction to entertain it. That being so he had no jurisdiction to order the amendment of the plaint so as to make the suit a maintainable one. The order allowing the amendment was also therefore without jurisdiction and consequently be set aside.

2. It is not disputed that when there were two trustees of the plaintiff-trust, in view of the provisions of Section 48 of the Indian Trusts Act it was not open to

one of the trustees only to maintain the suit. I however find it difficult to accede to the contention that the learned Munsif had no jurisdiction either to entertain the suit or to allow the other trustee to be brought on the record as a plaintiff.

3. In support of the contention that when a court has no initial jurisdiction to entertain a suit it has no jurisdiction to order an amendment of the plaint so as to make the suit cognizable by itself, reliance is placed on the case of *Tirkha Vs. Ghasi Ram*, . The decision in that case has however not been approved by a Division Bench of this Court in a recent case of *Kundan Lal Vs. Sri Narain Lal and Others*, . It was laid down there that

"The powers of a court to allow amendment are very wide. It cannot be doubted that a Court has jurisdiction to pass certain orders even though it has no jurisdiction to try the suit. When a court has jurisdiction to pass certain orders even though it has no jurisdiction to try the suit, there is no justification for saying that a court has no jurisdiction to allow the amendment of a plaint if it has no jurisdiction to try the suit."

Learned counsel wanted to distinguish the latter case from the present one on the ground that in that case the amendment which had been allowed only clarified certain matters. That however is besides the point. The principle laid down in that case was that even though a Court had no initial jurisdiction to try a suit it could allow an amendment of the plaint. Applying that principle to the present case we find that even if as is contended by the applicant, the suit filed by one of the trustees was not initially entertainable by the Munsif, he had jurisdiction to allow the amendment of the plaint.

4. It also appears to me that the contention that the plaint was a nullity and that the Munsif had no initial jurisdiction to entertain the suit is itself not a correct contention. The suit had been filed by a trust and though there were two trustees only one of them had signed the plaint. This was no doubt a defect in the plaint. The other trustee should either have been made a plaintiff or joined as a defendant.

It cannot however be said that the defect was of such a nature that it rendered the plaint a nullity or took away the jurisdiction of the Munsif to entertain it. The defect was in my opinion of a formal nature and the omission to implead the other trustee amounted only to an irregularity. The defect could be allowed to be removed at any stage.

5. In *Thina Shanmuga Moopnar Vs. Mona Chuna Nana Subbayya Moopnar and Another*, a suit to recover properties of a trust had been filed by two plaintiffs who claimed to be in sole management of the trust. There was one other trustee but he had not been made a party to the suit. It was pleaded that the suit was defective on that account. The plea was overruled by the trial court but was reiterated by the defendant in appeal before the High Court. It was held that if it was absolutely necessary to have the third trustee on the record he ought to be added. The suit should be dismissed only if the plaintiff refused to add him.

The High Court therefore allowed the third trustee to be added as a party and remanded the case to the trial court for decision on merits. The defect of not impleading the third trustee was not held to go to the root of the matter so as to affect the maintainability of the suit. In the present case there is no question of any refusal to add Mr. P. Samual Lal as a party. The trustee who had originally filed the suit had himself applied that Sri P. Samual Lal be brought on the record and Sri Lal also made a similar application.

6. Most of the cases referred to by the learned counsel for the applicant related only to the interpretation of Section 48 of the Trusts Act. It is not necessary to deal with them because it has not been disputed before me that a suit on behalf of a trust can be held to be in proper form only if all the trustees are parties to it. In support of the contention that the amendment should not have been allowed learned counsel referred to two cases, *V. Samanna Iyer Vs. Kadathur Village Rajavaikal Channel Silt Clearance Committee*, and AIR 1934 55 (Nagpur)

Both these cases however appear to be clearly distinguishable. In the Nagpur case, an appeal was filed by an agent on behalf of his principal who was dead on the date on which the appeal was filed and the legal representatives of the deceased were not allowed to be brought on the re-cord in the place of the deceased as it was held that O. 1 R. 10 did not apply. In the Madras case, a plaintiff filed a suit on behalf of the Village Committee claiming that he alone was entitled to sue on behalf of the Committee,

This right of his was contested and the trial court dismissed the suit on the ground that the plaintiff had in fact no right of a suit. In appeal an attempt was made to substitute another set of plaintiffs for the original plaintiff, but this was not permitted. The facts of both these cases are thus in no way similar to those of the present case and these cases cannot therefore be of any help to the applicant.

7. The learned counsel has therefore not succeeded in satisfying me that the order of the learned Munsif allowing the amendment was without Jurisdiction or that it should not have been made. I therefore find no force in this application in revision. It is dismissed with costs. The stay order is discharged.