

(1906) 08 BOM CK 0013
In the Bombay High Court
Case No : First Appeal No. 133 of 1905

Darves Haji Mahamad Sidik

APPELLANT

Vs

Jainudin Haji Badrudin

RESPONDENT

Date of Decision : 13-08-1906

Acts Referred:

Citation : (1906) 8 BOMLR 751

Hon'ble Judges : Lawrence Jenkins, J;Heaton, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lawrence Jenkins, K.C.I.E., C.J.—This appeal arises out of a suit relating to a public charity and purporting to be brought u/s 539 of the Code of Civil Procedure.

2. The circumstances under which such a suit can be instituted are indicated in the section : it may be instituted by the Advocate General acting ex officio or by two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General.

3. This suit was not instituted by the Advocate General, so it must be seen whether it can be said, that two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, instituted this suit. In our opinion it cannot.

4. What is meant by the institution of the suit is set forth in detail in Chapter V of the Code.

5. It is conceded that the institution of the suit within the meaning of Chapter V was not by two persons, but by one only; and the fact that the Advocate General consented to the institution of the suit by one person can give it no validity.

6. The objection was taken at once in the written statement and that led to an amendment of the plaint by the addition of the second plaintiff.

7. That addition the learned Judge appears to have thought he was entitled to make either u/s 27 or Section 32 of the Civil Procedure Code, and the Advocate General signed the following certificate:-"I give my consent to the amendment of the plaint of this suit as proposed."

8. But the section nowhere speaks of the consent of the Advocate General to an amendment of the plaint, and in our opinion, it would be unduly forcing the words of the Code to hold that by virtue of this consent given by the Advocate General it can be said of this suit that it was instituted by two persons having an interest in the trust and having obtained the consent in writing of the Advocate General.

9. The words of the section are explicit and the Courts cannot alter the scheme of the legislature by giving to the words of the section the effect for which the appellant contends in this case.

10. The defendants have throughout adhered to their point that the suit was bad at its institution and that its amendment did not better it: and we can find nothing in the conduct of the defendants that deprives them of the right of insisting now before us in appeal that the provisions of Section 539 have not been complied with.

11. In our opinion the suit is one which is defective in a material particular and is one which we must dismiss with costs throughout.