

(1988) 07 CAL CK 0034
In the Calcutta High Court
Case No : C.R. No. 3024 of 1985

Indian Association for the Cultivation of Science	APPELLANT
Vs	
Dr. Chittaranjan Sahu	RESPONDENT

Date of Decision : 18-07-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Limitation Act, 1963 — Section 22

Citation : (1989) 2 CALLT 4

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : D.N. Das, for the Appellant; Sudish Dasgupta, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—The present revisional application has been filed by the defendant/petitioner Indian Association for Cultivation of Science challenging Order No. 39, dated 22.8.1985 passed by the Learned Munsif, Second Additional Court at Alipore in Title Suit No. 23 of 1982 (since renumbered as Title Suit No. 17 of 1985). The Opposite Party/Plaintiff has filed the aforesaid Title Suit for a declaration that the election of the President and other two ordinary members of the Defendant Society in 1981 is illegal and not binding and for a further declaration that ballots sent by the members of the Defendant Society either by person or through duly authorised messengers are valid votes and in conformity with the customs, usages and conventions of ages and for a decree of declaration that the Annual General Meeting scheduled to be held on 25th January, 1986 is void and against Rules and Regulations of the Defendant Society and for other, consequential reliefs as stated in the plaint. The plaintiff after proceeding with the suit for a number of years has filed an application for leave under Order 1, Rule 8 C.P.C. to sue in a representative capacity. By the impugned Order the Learned Munsif has since allowed the prayer made by the plaintiff by petition, dated 24.7.1985 and the plaintiff has been directed to take steps for publication

in daily newspaper.

2. Being aggrieved, the petitioner/defendant has come to this Court and obtained the Rule on 19.11.85. There is an ad interim Order of stay of further proceedings of the suit till the disposal of the Rule.

3. Mr. D.N. Das, Learned Counsel appearing for the petitioner has submitted that the Learned Munsif has acted with material irregularity in exercise of the jurisdiction by granting leave under Order 1, Rule 8 C.P.C. to the greatest prejudice of the interest of the defendant. He has strongly emphasized that the prayer of the plaintiff to sue in the representative capacity is otherwise unwarranted and the same is hit by Article 57 of the Limitation Act. He has also drawn the attention of the Court by referring to the decision reported in *Rajendra Nath Tikku Vs. The Royal Calcutta Turf Club*, . It was found by the Hon"ble Mr. Justice A.N. Ray (as His Lordship then was) that a suit against unincorporated and unregistered club, --not a case of this misdescription--amendment not allowed since it would change the character of the suit. He has also drawn the attention of the Court to Palmer's Company Law, of 21st Edition at Page No. 503. The passage referred to is as to scope of--"to sue and to be sued" in the representative capacity.

4. Mr. Dasgupta, Learned Advocate appearing for the Opposite Party has submitted that in granting leave to sue in a representative capacity, the character of the suit neither changes nor the prayer is hit by law of limitation. He has referred to a decision reported in *Seth Nandaramdas Atmaram by Agent Hemrajmul Vs. Zulika Bibi and Others*, . It will appear from the said decision that the provision of Order 1, Rule 8 is designed to save time and expense and to ensure a convenient trial of questions in which a large body of persons are interested, while fighting at the same time a multiplicity of suits and consequent harassment to parties. The benefit intended by the rule and the simplicity of the procedure secured by it, would be lost by construing to mean that the entire body of men interested in the litigation, are or should be deemed to be actually parties to it. With regard to the question of limitation, it will appear from the said reported decision that an amendment which does not seek to bring in a new party but only varies the ground on which the relief was originally sought or asked for a difference or additional relief without changing the cause of action, does not bring the case within Section 22 of Limitation Act. Similarly, where a party is already on the record either as a plaintiff or as a defendant, an amendment which merely alters the capacity in which he has been impleaded to one of a different character, does not involve an addition of parties so as to attract the provisions of Section 22 of Limitation Act. Therefore, an amendment of the plaint by which the suit is converted into a representative action under Order 1, Rule 8 C.P.C. does not involve the addition of fresh parties so as to attract the provision of Section 22 of the Limitation Act. Mr. Dasgupta has submitted that the facts involved in *AIR 1964 Cal. (Supra)* are absolutely distinguishable from the facts of the instant case. There are various members of

the Defendant Society who are interested and may be interested in the result of the suit. The plaintiff only seeks to maintain the character of a representative of the numerous members. This is not misdescription and there is no question of limitation.

5. Having heard the Learned Lawyers of both sides and upon perusal on the materials on record and considering the points of law involved in the instant case it appears that Order 1, Rule 8 C.P.C. indicates inter alia that (1) where there are numerous persons having the same interest in one suit:

(a) one or more of such persons may, with permission of Court, sue or be sued, or may be defend such sue on behalf, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued or may defend such suit, on behalf of, or for the benefit of all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under Sub-rule (1), at the plaintiff's expense, given notice of the institution of the suit to all persons so interested, either by personal service or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under Sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under Sub-rule (1), and no such suit shall be withdrawn under Sub-rule (3), of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of the Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in Sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this Rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

6. Thus looking to the statute it is quite clear that for effective adjudication of a type of litigation as indicated above leave is required to be granted under Order 1, Rule 8 C.P.C. The question of limitation as to the status of a person has been considered by the Privy Council in 37 Indian Appeals P. 27 (Raja Peary Mohon Mukherjee v. Narendra Nath Mukherjee and Ors.). It was found that in a suit by the Executors of a deceased Shebait to recover from the appellant as a Receiver of the Debottar Estate or personal monies which the Testator owing to the appellant's interference and persistent of opposition had not been able to

recover through his incumbents, and for further sums which he had been compelled to spend out of his private funds in protecting the Debottar Estate and performed his obligation as Shebait which the Executor has to pay on his death on account of debts of the Estate-it was held that the question of limitation does not arise as the amendment did not alter the character of the suit or brings any new person on the record. Following this principle the Madras High Court stressed the point that addition of parties in a case where a person sues on his own behalf and the plaint having been amended the suit is converted into a representative action under Order 1, Rule 8 C.P.C. and there is nothing for addition of parties and the case is not hit by Section 22 of the Limitation Act.

7. Looking to the nature of the present suit and regard being had to the materials on record this Court does not find that by granting the leave under Order 1, Rule 8 C.P.C. to the Opposite Party/Plaintiff to maintain the suit in a representative character, the Court below has acted with material irregularity in exercise of the jurisdiction. It is true that the suit is pending for a long time unnecessarily and the granting of leave under Order I, Rule 8 C.P.C. is likely to delay the disposal of the said suit as it is. This Court has also considered that there is an Order of injunction and looking to the terms of the Order of injunction, this Court only found that with regard to the preservation of the ballot papers, an interlocutory Order has been made only. There is no bar to hold any fresh election as per the rules and after complying with the necessary formalities according to the law. At this stage, this Court is not called upon to decide the case on merits as to the claim of the rival parties. Accordingly, this Court is refrained from making any comments as to the merits, lest any observation might influence the Learned Trial Court or cause prejudice to the interest of either party. In view of the scope of Order I, Rule 8 C.P.C. and the question of limitation as raised, this Court finds that there is nothing wrong in the impugned order. Hence the revisional application is rejected without any order as to costs.