

**(2012) 09 KL CK 0158**

**In the High Court Of Kerala**

**Case No : I.A. No. 1440 of 2011 in S.A. No. 88 of 2001**

Subhash, S. and Others

APPELLANT

Vs

Patharam (Sooranad South) Educational and Cultural Society  
and Others

RESPONDENT

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**Date of Decision : 12-09-2012**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 8, Order 23 Rule 3, Order 41 Rule 20

**Citation : (2012) 4 ILR (Ker) 159 : (2012) 4 KLJ 177**

**Hon'ble Judges : V. Chitambaresh, J**

**Bench : Single Bench**

**Advocate : P.B. Suresh Kumar, for the Appellant; R.D. Shenoy, for the Respondent**

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## **Judgement**

Mr. Justice V. Chitambaresh

1. Can third parties be impleaded as proper parties to a Regular Second Appeal when they were not parties either to the suit or to the appeal

therefrom? The jurisdiction under Order I, Rule 10(2) to add parties in the context of the powers of the appellate court u/s 107(2) of the Code of

Civil Procedure, 1908 (the CPC for short) arises for consideration. The suit is for a declaration that the amendment made to the bye-laws of a

Society are null and void and for a mandatory injunction directing the defendants to administer it as per the original bye-laws. The Society

registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 is the educational agency of a school

governed by the Kerala Education Act. The amendment made to the bye-laws of the Society concerns the admission of patron members on

payment of Rs. 1,000 and the appointment of one amongst them as a permanent Manager of the school. The trial court dismissed the suit which

was reversed in appeal by the lower appellate court and the same is impugned at the instance of the defendants in this Regular Second Appeal.

The fourth plaintiff died pending first appeal while the remaining plaintiffs (except the second plaintiff) died pending Regular Second Appeal and

their legal heirs are not brought on record. It later transpired that a compromise was entered into between the second plaintiff and defendants 1, 3,

4 and the legal heirs of the second defendant who alone are parties to the Regular Second Appeal. The parties requested the compromise to be

recorded under Order XXIII, Rule 3 of the CPC whereby they seek to set aside the judgment of the lower appellate court and restore the

judgment of the trial court. It was at this juncture did the present petitioners seek impleadment in the Regular Second Appeal in order to oppose

the recording of the compromise and have the judgment of the lower appellate court sustained.

2. My attention was drawn to certain observations of the lower appellate court and the relevant portion of the judgment in appeal is extracted

herein below:

The 1st defendant Society administers a large high school. The assets of the high school came by way of contribution from the public at large. Yet

the state of affairs reveal that the director board was fraudulently functioning as the general body also. So fraudulently the entire power has been

exercised by the director board. The amendments were made when approved and it was decided to constitute general body, further amendments

ought to have been made after general body was duly constituted. There is absolutely nothing to indicate that general public was invited to be

members of the general body after due notification. The way in which generous contribution is seen made by the general public for the

establishment of the school indicates that had notice been given, never the membership of the general body would have remained at 9 for a long

time and the maximum membership was only a meagre 25. As referred to already the induction of three members at the crucial point of time of

passing the amend merits to bylaw was itself suspicious and was made with a view to wrest control of the society by the defendants. \* \* \* \* \*

\* \* \* Anyone who has attained the age of 21 years and sane and residing within the Sooranad South Village could become a member. Under such

circumstances only with effective manipulation the membership of the general body can be maintained at a low level of 25. There is absolutely

nothing to indicate that the general body meetings were convened after the required prior notice of 7 days. The records in this regard are not kept

properly. The membership register shows that annual subscriptions were not being paid even by the defendants.

The finding of the lower appellate court would indicate that the assets of the school accrued by way of contribution from the public and that the

general body of the Society was not being convened regularly. The membership of the general body never exceeded 25 in number even though any

one who had attained the age of 21 years and sane and residing within Sooranad South ""Village could become a member. The finding in short is

that the administration of the school and the assets of the Society is sought to be garnered by a section of people without offering membership to

the eligible public. The justifiability of such conclusion has of course to be decided in the Regular Second Appeal only wherein it is urged that reliefs

in excess of the plaint claim were granted.

3. The impleading petitioners contended that the compromise is attempted to be recorded surreptitiously by defendants 1, 3, 4 and the legal heirs

of the second defendant by winning over the surviving second plaintiff. The compromise, if recorded, would entail in the dismissal of the suit in toto

enabling a few to wrest control of the Society and keep the public at bay. The impleading petitioners asserted that they are not seeking any

individual reliefs in the suit and that their attempt is only to sustain the judgment of the lower appellate court in the interest of the larger public.

Defendants 1, 3, 4 and the legal heirs of the second defendant however maintained that the remedy, if any, of the impleading petitioners is to file a

fresh suit only and that they cannot be impleaded. It is further contended that there is no enabling provision for third parties to be impleaded in the

Regular Second Appeal when they were not parties at all either to the suit or to the appeal therefrom. I was also reminded that the suit is not one

for vindication of a public right after obtaining leave u/s 92 of the CPC or filed in a representative capacity under Order I, Rule 8 of the CPC.

4. I heard Mr. P.B. Suresh Kumar, Senior Advocate on behalf of the impleading petitioners and Mr. R.D. Shenoy, Senior Advocate on behalf of defendants 1, 3, 4 and the legal heirs of the second defendant at length.

5. Order I, Rule 10(2) of the CPC enables a court to implead necessary and proper parties at any stage of the suit in order to effectually and completely adjudicate upon and settle all the questions involved in the suit. This power of the trial court can as well be exercised by the appellate court as per Section 107 of the CPC which is as follows:

107. Powers of Appellate Court.--(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred

and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

Section 107(2) of the CPC empowers even the appellate court to add parties as envisaged under Order I, Rule 10(2) of the CPC particularly

when Order XLI, Rule 20 of the CPC enabling third parties to be impleaded in appeal is not exhaustive. Order XLI, Rule 20 of the CPC only

permits a person who was already arrayed in the suit and who was not made a party in the appeal to be impleaded if he is interested in the result of

the appeal which contingency did not arise in this case.

6. It was held in Haliman and another v. Nur Muhammad Khan AIR 1923 Lah 490 as follows:

Under Order XLI, Rule 20, Civil Procedure Code, an appellate court has power to implead only such persons as parties to the appeal as were

parties in the Trial Court and were not made parties to the appeal but not those who are complete strangers to the suit.

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The powers of a Court to implead parties are clearly circumscribed by Order XLI,

Rule 20 and it is only in exceptional circumstances that the inherent powers u/s 151 could be invoked.

It was held in *Banbihari Mukerji Vs. Bhejnath Singh Mahapatra*, as follows:

I have no doubt that, in some circumstances, it may be right and proper that the Court should add as parties to the proceedings, even at the

appellate stages, persons who were not amongst the original parties to the suit. But the circumstances must be exceptional and must be such as

renders it really necessary in the interest of the original parties to the suit, that some other persons should be added to the proceedings; so that the

matters originally in dispute may be properly adjudicated upon and finally determined as between the original parties to the suit.

It was again held in *Notified Area Committee Buria Vs. Gobind Ram Lachhman Dass and Others*, (Full Bench) as follows:

That apart from the provisions of Order XLI, Rule 20, Civil Procedure Code, the appellate court has inherent powers to permit parties to be

added to appeals in suitable cases and the language of Rule 20 of Order XLI is not exclusive or exhaustive so as to deprive the appellate court of

the inherent powers in this respect.

This Full Bench decision was quoted with approval in *Conugunta Subbarayudi Vs. Eluri Brahmanadan and Others*, . It was held therein as follows:

When once it is clear that Rule 20 of Order XLI is not exhaustive of the powers of the appellate court for impleading or adding parties to the

appeal, certainly powers under Order I, Rule 10, CPC read with Section 107(2) CPC and under other appropriate provisions including Section

151 CPC in proper cases can be availed of even in appeals.

A discordant note was however struck in *Monjiram Indrachandra Vs. Maneklal Mansukhbhai Seth*, as follows:

1 should be disposed to hold that as S. 107, Civil P.C., is expressly subject to such conditions and limitations as may be prescribed, it must be

subject to O. XLI, R. 20 and, therefore, in order to enable a party to be added in appeal it is necessary that he should satisfy the conditions of O.

XLI, R. 20, i.e., he should be a party to the suit in the Court from whose decree the appeal is preferred and should be interested in the result of the

appeal. It appears to me that very great complications would arise if third parties were added in appeals, as they would necessarily, in a large

number of cases, raise points of fact which have never been considered by the Court below.

7. The views expressed by the High Courts of Calcutta, Punjab and Andhra Pradesh appeal to me than the one expressed by the High Court of

Bombay in the decision aforequoted and the following principles can safely be deduced therefore:

(i) The appellate court has inherent powers to permit parties to be added to appeals in suitable cases.

(ii) Order XLI, Rule 20 of the CPC is not exclusive or exhaustive of the powers of the appellate court to add parties.

(iii) The jurisdiction under Order I, Rule 10(2) of the CPC can be exercised by the appellate court by virtue of Section 107(2) of the CPC.

(iv) The impleadment must be to facilitate the determination of the issues as between ""He original parties to the suit.

(v) It is only in exceptional circumstances can the power be invoked in appeal and never to implead total strangers to the proceedings.

8. I find that exceptional circumstances do exist to implead or add the petitioners in the Regular Second Appeal whose endeavour is to oppose the

compromise and sustain the judgment of the lower appellate court. It is the specific case of the impleading petitioners that they were not offered

membership in the Society even though they had attained the age of 21 years and were residing within the Sooranad South Village. The finding of

the lower appellate court (as it now stands) supports the plea of the impleading petitioners that the school was established by contribution from the

public and that its management is attempted to be cornered by a few excluding the public. I am not for a moment holding mat the conclusion of the

lower appellate court was justified in as much as the correctness of the verdict is open to scrutiny in the Regular Second Appeal only. The very fact

that the legal heirs of the deceased plaintiffs are not impleaded and that a compromise is attempted to be recorded with the junction of the second

plaintiff alone is also a matter for deeper probe. This assumes importance in the wake of the plea of the impleading petitioners that the terms of the

compromise are opposed to public policy and void in terms of the Explanation to Order XXIII, Rule 3 of the CPC and cannot be recorded. The

impleading petitioners cannot at all be termed as total strangers to the proceedings and it is premature to consider whether they could seek

transposition as appellants in the Regular Second Appeal later. The impleadment of the petitioners would certainly help this court to properly

adjudicate upon and finally determine the matters in dispute between the original parties to the suit. The impleading petitioners can therefore be

brought on record as additional respondents in the Regular Second Appeal and not as additional plaintiffs in the suit as sought. I allow I.A. No.

1440/20U in S.A. No. 88/2001 and implead the petitioners therein as additional respondents in the Regular Second Appeal.

Post the Regular Second Appeal for hearing.