
(1952) 08 CAL CK 0028

In the Calcutta High Court

Case No : Appeal from Original Order No. 127 of 1952

T.G. Jog

APPELLANT

Vs

Muir Mills Ltd.

RESPONDENT

Date of Decision : 28-08-1952

Acts Referred:

Civil Procedure Code, 1882 — Order 1 Rule 8, Order 1 Rule 8(1), Order 1 Rule 8(2),
Order 16 Rule 9, 30

Citation : (1953) 2 ILR (Cal) 171

Hon'ble Judges : Guha Ray, J; Das, J

Bench : Division Bench

Advocate : Sankar Barrierjee, for the Appellant; Atul Chandra Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—This is an appeal against a judgment of Mitter J. refusing an application filed by the Appellants for being added as co-Plaintiffs in the suit.

2. In order to appreciate the contentions raised on behalf of the parties in this appeal, it is necessary to state briefly the allegations on which the suit was founded. The allegations are that a notice convening a meeting of the shareholders and a circular issued for that purpose were issued by the company fixing the date of the meeting for October 20, 1947. The notice and the circular suppressed material facts which were necessary for the shareholders to know in order to judge the effect of the proposed resolutions. The resolutions which are challenged in this suit are resolutions Nos. 1 and 2 which were ultimately passed at the meeting. The first prayer made in the plaint was for a declaration that resolutions Nos. 1 and 2 are invalid and should be set aside. There was a further prayer for a declaration that the appointment of Defendant No. 2 as managing agents of the company was not binding on the company and on the shareholders of the company. The suit was instituted in June, 1950. Thereafter certain proceedings were taken for revocation of the leave granted by this Court for the

institution of the suit. Those proceedings ultimately ended in March, 1952. Thereafter the present application was filed by the Appellants for being added as co-Plaintiffs. The Appellants alleged that the prayers made in the suit did not exhaust all the remedies to which the Plaintiffs would be entitled on the allegations made in the plaint. In particular, the Appellants alleged that the Plaintiffs omitted to pray for a declaration that resolutions Nos. 3 and 4 were also invalid and not binding on the Company. The matter came up before Mitter J. who dismissed the application on the ground that the Appellants had no right to come in as co-Plaintiffs as also on the ground that there was great delay in making the application.

3. It is the propriety of this order which is challenged in this appeal.

4. Mr. Gupta appearing on behalf of the Plaintiffs Respondents raised a preliminary objection that the appeal was incompetent. In the view we have taken of this matter, it is not necessary to deal with this point.

5. Mr. Banerjee for the Appellants has broadly contended that the Appellants who are also shareholders are entitled, as a matter of right, to come in and join as co-Plaintiffs because the original Plaintiffs are their representatives and as such they have an absolute right to be added as co-Plaintiffs. The question is whether this contention is correct. Mr. Banerjee has referred us to the provisions of Order XVI, Rule 9 of the Rules of the Supreme Court and Section 30 of the Code of Civil Procedure, 1882. He has also referred us to the provisions of Order I, Rule 8, Sub-rule (2). His submission is that the effect of the addition of Sub-rule (2) to Order I, Rule 8, which did not find a place either in Order XVI, Rule 9 of the Rules of the Supreme Court or Section 30 of the Code of 1882 clearly indicates that the Legislature intended to confer on all persons who are represented in the suit under Order I, Rule 8, a right to come in and be added as a co-Plaintiff. In my opinion, this contention cannot be accepted. The mere fact that Section 30 of the Code of 1882 did not contain an express provision similar to that contained in Order I, Rule 8(2), does not imply that there was no such power in the court to allow a person to be added as a co-Plaintiff. Order I, Rule 8(2) merely embodies the existing state of the law. If a suit is filed by some persons as representing others, it is obvious that these other persons who are so represented by the Plaintiffs on record can come in and apply to the court for being added as co-Plaintiffs provided they satisfy the court that the suit is not being properly carried on by the Plaintiffs on record. Order I, Rule 8 merely embodies that general rule. Order I, Rule 8(1), as it now stands after the amendment of that rule by the rules of this Court framed in 1938, states that where there are numerous persons having the same interest the court may direct that any one or more of those persons may sue or be sued on behalf of the other persons similarly interested. Under the amended rule the court has now to give a direction that the persons who seek to sue as Plaintiffs would be entitled to represent the others and thereafter the court directs the prescribed notices to be issued under Order I, Rule 8(2). The issue of a notice is an invitation to other persons similarly

interested to come in and join as co-Plaintiffs. After the suit has been properly instituted after the necessary leave under Order I, Rule 8, if a person wants to come in and join as a Plaintiff on the ground that he has the same community of interest with the original Plaintiffs, it cannot be suggested that the court is powerless in the matter and must add such an applicant as a party co-Plaintiff. The object of a representative suit is to allow some of the persons similarly interested to sue on behalf of the others. It is a rule of convenience in order that a large number of persons who have the same interest in the subject-matter may be represented by some of them. If the law were that all other persons equally interested would be entitled as of right to come in and join as co-Plaintiffs, the very object underlying the rule would be frustrated. At the same time, in order that the suit may be properly carried on, the court has the power to allow other persons to join provided it is shown that the suit is not being properly conducted and that the interests of the persons who are represented in the suit are not being properly safeguarded by the Plaintiffs on record. This was the view taken by Daver J. in the case of *Vasonji Tricumji and Co. v. Esmailbhai* [1919] ILR 34 Bom. 420.

6. Mr. Banerjee referred us to some other decisions of the different High Courts which, in his submission, supported his broad contention that any person who is similarly interested as the original Plaintiff can come in and be added as a co-Plaintiff. I shall refer to the various decisions referred to by him. The first case on which Mr. Banerjee relied is the case of *Swaminatha Mudaliar v. Kumaraswami Chettiar and Ors.* [1923] AIR (Mad.) 472. That was a case where a suit was instituted on behalf of a religious endowment by certain persons to recover certain sums of money against the Defendants. A decree had been obtained but the Plaintiffs who had obtained the decree did not negligently execute the decree for a period of five years. Thereafter certain other persons interested in the endowment made an application to the court for permission to execute that decree. This permission was granted. An objection was raised by the judgment-debtors that it was not open to the court to add persons after the passing of the decree. This objection was overruled, the Court observing that as the original Plaintiffs decree-holders did not execute the decree the interest of the endowment which was represented by the original Plaintiffs was in jeopardy and as such other persons who were represented by the original Plaintiffs could come in and execute the decree. This case does not lay down any general rule that in all cases persons who are represented by the Plaintiffs in a representative suit can come in and claim as of right to be added as co-Plaintiffs. The reason why the High Court sustained the order of the court below was that the interest of the original Plaintiffs was in jeopardy. Mr. Banerjee also referred us to the case of *Krishnamachariar v. Chinnammal Ors.* [1913] 24 M.L. J. 192. There also the Plaintiffs who had sued in a representative character, were trying to compromise the suit. In those circumstances, liberty was given to other persons equally interested to come in and join in the suit. Reliance was also placed on the case of *Swami Gayamanand v. Jagdish Chandra Bagchi Ors.* [1942] AIR (All.) 315. That

was a suit u/s 92 and, in my opinion, the decision is of no assistance to the Appellants. Reference was also made to the case of Abdulla and Anr. v. Parshotam Singh and Ors. [1935] AIR (Lah.) 33. It was also a case where the facts were dissimilar. In that case certain persons had brought a suit on behalf of the co-proprietors of a certain shamilat-taraf. The suit was compromised by the original Plaintiffs and thereafter two other persons claiming to be similarly interested preferred an appeal. An objection was raised to the competency of the appeal on the ground that the Appellants were not parties on the record. This objection was given effect to on the ground that the suit itself had come to an end. I do not see how this case has any bearing on the present question. Reference was also made to the case of Purna Chandra Khan and Anr. v. Nalini Kanta Khan and Ors. [1928] AIR (Cal.) 741. The facts were that certain persons representing a village deity had instituted a suit for rent. The tenant Defendants disputed the amount of rent annually payable. Thereafter certain persons claiming to have an interest in the village deity applied for being added as co-Plaintiffs and were joined as such. Thereafter some of these added persons deposed in favour of the Defendant admitting the Defendant's claim. The suit was decreed in the court below. On appeal the added co-Plaintiffs filed a petition admitting the Defendant's claim. Thereupon it was argued that the suit had ceased to be representative suit. This contention was overruled, the Court holding that the original Plaintiffs still retained their representative character. The decision itself, in my opinion, has no bearing whatsoever on the question which was raised by Mr. Banerjee. The decisions cited are, therefore, of no assistance to Mr. Banerjee as supporting his contention that a person who is represented by the Plaintiffs in a representative suit has an absolute right to come in and join as a co-Plaintiff. Order I Rule 8(2) merely declares the right of a person to come and be added as a party to the suit but it does not prescribe the conditions under which the court is required to accede to such a prayer. As I have already indicated, the right of a person to intervene in a representative suit must depend on the question whether the suit as filed was being properly conducted or not and whether the interest of the applicant was in jeopardy by reason of the inaction or action on the part of the representative Plaintiffs. In the present case, in their application for being added as parties the Appellants did not suggest that the Plaintiffs on record were not properly carrying on the suit or would not do so. The ground on which they made the application was entirely a different one. Their grievance was that the Plaintiffs had not claimed all the reliefs to which the Plaintiffs might have been entitled on the allegations made in the plaint. In my opinion, this is an irrelevant consideration. A person who seeks to be added as a co-Plaintiff must accept the plaint as it is. He cannot ask the court to add him as a party for the purpose of enlarging the scope of the suit. Mr. Banerjee suggested that the prayer which he has made in the petition was an innocuous prayer, the prayer being that he merely wanted to be added as a co-Plaintiff, whatever the allegations in the petition might have been. We cannot overlook the allegations on which the Appellants wanted to be added as co-Plaintiffs. Those allegations clearly indicate that the object of their being added as co-Plaintiffs was to ask the

Court to have the plaint amended and to include in the plaint certain prayers which, in their view, could be properly claimed in the plaint.

7. It is also apparent from the affidavits filed on behalf of the Defendants that there can be no suggestion that the present suit would not be carried on properly. The allegation is that certain other persons are interested in prosecuting the suit. In these circumstances, there is no ground for adding the Appellants who were the applicants in the court below as co-Plaintiffs in the suit.

8. It was contended that if the Appellants are not added as co-Plaintiffs the decision in this suit may be a bar to a subsequent suit in which the validity of resolutions Nos. 3 and 4 is sought to be challenged. In my opinion, quite apart from the question whether this apprehension is well-founded or not, in this application we are concerned only with the question whether the Appellants should be allowed to come in and join in the suit as framed. The suit is intended to declare resolutions Nos. 1 and 2 as void and not binding on the shareholders and the company. I have already referred to the allegations which formed the basis of the suit. That basis is that these resolutions were passed by suppression of material facts which were necessary for the shareholders to know. The question whether resolutions Nos. 3 and 4 are ineffective or void, does not concern the Plaintiffs in this suit. The Plaintiffs in this suit are those persons who are interested in having resolutions Nos. 1 and 2 declared null and void. It is obvious that resolutions Nos. 3 and 4 have benefited the preference shareholders and those shareholders would not be interested in having those resolutions declared nullities. It may, therefore, be suggested that there is no community of interest between the present Plaintiffs who represent all shareholders, preference or ordinary, and those who may seek to have resolutions Nos. 3 and 4 declared void and not binding on the company.

9. On all these grounds we are of opinion that the order made by Mitter J. that the Appellants cannot be added as co-Plaintiffs is correct and must be sustained.

10. In the result, this appeal fails and is dismissed with costs in favour of the Plaintiffs Respondents as against the Appellants. Certified for two counsel.

Guha Ray, J.

11. I agree.