

(1927) 03 MAD CK 0029
In the Madras High Court

V.R.S.S. Chidambaram Chettiar	Vs	APPELLANT
P.L.N.K. Subramaniam Chettiar and Others		RESPONDENT

Date of Decision : 08-03-1927

Acts Referred:

Citation : AIR 1927 Mad 834 : (1927) 53 MLJ 269

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Petitioner seeks to revise the order of the District Munsif of Trichinopoly in I. A. No. 211 of 1926 adding a second plaintiff to

a suit under Order 1, Rule 10.

2. A Court has a large discretion under this order, and 1 should deprecate any attempt to diminish that discretion by substituting special

pronouncements in special cases for the actual language of the rule. The Court may add any person whose presence before the Court may be

necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. A question

involved in a suit is a question which will come out when the case is opened.

3. In *Montgomery v. Foy* (1895) 2 QB 321 a shipowner was not paid his freight by the shipping agents, so he put the cargo in a warehouse with

notice that it was subject to a lien for freight. The agents deposited the amount under protest. The shipowner sued for the deposit. Then the real

owners of the cargo for whom the shipping agents were acting asked to be made defendants as they had counter-claims to advance for damages

for short delivery and injury to cargo. The plaintiff objected that his cause of action only lay against the agents who were bound to pay his freight

and the owner's claim was an extraneous matter; nor could a plaintiff be compelled to join as defendants a person whom he did not wish to sue.

Lord Esher ruled that where there is one subject-matter out of which several disputes arise, all parties may be brought before the Court, and all

those disputes may be determined at the same time without the delay and expense of several actions and trials.

4. Kay, L. J., agreed on the ground that if there had been two separate suits between the shippers and owners and between the shippers and

agents, such suits would have been tried together to decide what was due to the shippers. As put by Smith, L. J., the whole matters in dispute arise

under the one contract of affreightment.

5. Lord Esher again in *Byrne v. Brown* (1889) 22 QB 657 observed:

It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main

evidence, and the main inquiry, will be the same.

6. *Vidyanatha v. Sitarama* ILR (1881) M 52 expressly guards against the gloss adding after questions involved in the suit, between the parties to

that suit, and rules that a material question common to the parties and to third parties should be tried once for all.

7. In the present case the plaintiff sues for a declaration that a sale deed was obtained by 1st defendant benami for the plaintiff's benefit and for

possession and mesne profits.

8. The 1st defendant pleads that the property was bought by him in his own right. Plaintiff claims to have had temporary possession through his

agent Sundaram Pillai whom the defendant ejected, and the defendant retorts that Sundaram Pillai was his own agent.

9. Then this Sundaram Pillai applied to be made a party to the suit along with one Ramalingam Pillai, alleging that the 1st defendant was benamidar

for all three of them, plaintiff and the two new parties.

10. The learned District Munsif has ordered that Sundaram Pillai, and not Ramalingam Pillai, be joined as plaintiff, because

he appears to be as much interested as Subramaniam Chetti, the original plaintiff.

11. This is to introduce a line of reasoning quite foreign to Order 1, Rule 10.

12. If A and B. severally claim property they cannot bring a joint suit merely

because the property is the same. There must be a common question of fact. The fact according to the first plaintiff is that he is the sole owner of the property, and the new plaintiff is his agent. The fact according to the new plaintiff is that he is part owner of the property, and a joint principal with the first plaintiff. The Code does not contemplate a triangular duel of this sort in which one plaintiff shoots at the other, and both at the defendant. And if joinder of plaintiffs is impossible under Order 1, Rule 1, it does not become possible under Order 1, Rule 10.

13. But under this latter provision two parties may be joined in a suit to settle all the questions involved in the suit. Is the question of the new plaintiff's claim involved in the suit between the 1st plaintiff and the 1st defendant? They are both agreed that he is an agent, though they happen to be disputing whose agent he is, and neither admits that he has any claim to the property. It is difficult to see therefore how the question of his claim could possibly be involved in the suit. It is as though a landlord sued in ejection, and an entire stranger sought to intervene as owner whom the landlord did not recognise, and to whom the tenant did not attorn. His claim would not be involved in the suit.

14. Applying the English rulings to these circumstances, it cannot be said that the main evidence will be the same; and it cannot be said that 1st plaintiff's alleged purchase through 1st defendant as his benamidar is subject-matter out of which the new plaintiff's dispute arises.

15. Nor is the learned District Munsif labouring under any such impression; the real reason for his order is that the first plaintiff has been adjudicated insolvent, the 2nd plaintiff is the Official Assignee, and the insolvent cannot be expected to keep the Official Assignee informed in the same manner as Sundaram Pillai. This if it means anything at all presumably means that it is more convenient for the Official Assignee to have a solvent plaintiff, than to finance the litigation out of the insolvent's estate; but such a consideration is quite irrelevant to the question.

16. The matter to be adjudicated in the suit is whether the first plaintiff or first defendant is the real purchaser under the sale deed. If some third party wishes to claim that he is the real purchaser adversely to the pleas of both plaintiff and defendant, he must file his own suit.

17. The petition is allowed with costs payable by 3rd respondent and the order of

the Lower Court is cancelled.