

KEERTHIWANSA

v.

URBAN COUNCIL HORANA AND 3 OTHERS

COURT OF APPEAL
JAYASINGHE, J.
JAYAWICKREMA, J.
C.A.L.A. 318/98
D.C. COLOMBO 6169/L
MARCH 1, 31, 2000

Civil Procedure Code - S.18 - Addition of a Party - wider construction adopted by English Law to be preferred.

The Plaintiff - Respondent - Petitioner filed action seeking a declaration of title to the land in question and for an interim injunction preventing the Defendant - Respondent - Respondent (Urban Council) from acquiring any part of the land for road development. The Court allowed the Land owners adjoining the road way to be, added as parties on the basis that grave prejudice had been caused to them.

On Leave been sought :

Held :

- (i) Originally the petitioner and several other residents gave their written consent to the Defendant Respondent (U.C) to widen the roadway upto 12 ft (R8). Subsequently the Plaintiff Respondent Petitioner and 6 other residents requested the Chairman of the Development Council to widen the road only upto 10ft (X10).
- (ii) R2 and X1C are documents affecting land, but they are non - Notarial documents.
- (iii) The matter that the Court has to decide is the validity of documents R2 and X1C, which deal with the widening of the entirety of the road and not only regarding the widening of the road at the point adjoining the Plaintiff Respondent - Petitioners land. Thus the dispute is not entirely a dispute affecting only the land of the Plaintiff Respondent Petitioner but all other residents of lands adjoining the roadway who had given consent for the widening of the road.
- (iv) Therefore widening of the road which is based on R2 is a matter which has to be decided amongst signatories to R2 and X1C.

- (v) In deciding whether a new party should be allowed under S.18(1) C.P.C the wider construction adopted by English Law is to be preferred.

APPLICATION for Leave to Appeal from the Order of the District Court of Horana.

Cases referred to :

1. *Banda v. Dharmaratne* - 24 NLR 210
2. *Arumugam Coomaraswamy v. Andiris Appuhamy* - 1985 2 SLR 110

W. Dayaratne, with Ms. R. Jayawardena for Plaintiff - Petitioner.

Anil Silva for Defendant - Respondent.

Mahanama de Silva for 1 - 3rd Intervient Petitioners - Respondents.

Cur. adv. vult.

May 08, 2000.

JAYAWICKRAMA, J.

This is a leave to appeal application to set aside the order dated 09.12.1998 of the learned District Judge of Horana wherein she has allowed the application of the petitioner-respondents to be made parties to the action.

The learned District Judge on 09.12.1998 added the petitioner - respondents as parties to the action in the District Court on the basis that grave prejudice had been caused to them. Her order is as follows:-

"මා විසින් එම දිනයේ මෙම නඩුව පරීක්ෂා කිරීමේදී සමහර අයට නගර සභාව මගින් විශාල අගතියක් සිදු කර ඇති බව පෙනී යනුදී. එම නිසා මා විසින් එම කට්ටිය පාර්ශව කරුවන් කරමි."

The learned Counsel for the plaintiff-respondent-petitioner submitted that the petitioner-respondents cannot seek intervention in the District Court case as it is not necessary to add them as parties to the action. He contended that the widening of the road which is the subject matter of this application is exclusively within the powers vested on the defendant - respondent-respondent Council and the extent of land which would be acquired from the plaintiff - respondent -

petitioner's land is entirely a dispute affecting only the plaintiff - respondent - petitioner and more particularly the subject matter of this case is restricted only to the plaintiff - respondent - petitioner's land. He further submitted that as the case was instituted in the year 1996 and the petitioner - respondents were aware of the situation but they refrained from intervening in this case for nearly 1 1/2 years and as such they have no right to intervene in this action. The learned Counsel further contended that at the time of making the said application for intervention under section 18(1) of the Civil Procedure Code the defendant-respondent- respondent Council explored the possibility of a settlement with the plaintiff-respondent-petitioner to widen the said roadway only up to 10 feet, and as such no prejudice had been caused to the petitioner-respondents and therefore it is not necessary that the petitioner-respondents be added as parties to the action as the parties have agreed for a settlement of the main dispute.

Under section 18(1) of the Civil Procedure Code "the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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 that action, be added," as parties. When one interprets the above section it appears that, whenever a court can see in the action brought before it that the rights of some of the parties may or will be probably affected, the court shall have the power to bring all the parties before it and determine all their rights by one trial in order that the costs on litigation may be diminished as much as possible.

In *Banda v. Dharmaratne*⁽¹⁾ Schneider J held that,

"The policy of the Civil Procedure Code is to avoid a multiplicity of action, and therefore, where the facts brought to the notice of the court before it has finally disposed of the action are such that the addition of a person would tend effectually to deal with all the questions involved, the Court should not put difficulties in the way of parties to the action who seek to add such persons, but should stay its hand and afford the party

seeking to do so an opportunity to add such persons as may be necessary to finally determine all questions arising in the action."

In deciding whether the addition of a new party should be allowed under section 18(1) of the Civil Procedure Code the wider construction adopted by English law is to be preferred. Whenever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that other actions may be brought in respect of that transaction the court has the power to bring all the parties before it and determine the rights of all in one proceeding. It is not necessary that the evidence on 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. Even if the narrower construction is adopted a person who has to be bound by the result of the action or has a legal right enforceable by him against one of the parties to the action which will be affected by the result of the action should be joined; so also where the question raised by the party seeking to be added is so inextricably mixed with the matters in dispute as to be inseparable from them and the action itself cannot be decided without deciding it, then the addition should be made; if the plaintiff can show that he cannot get effectual and complete relief unless the new party is joined or a defendant can show that he cannot effectually set up a defence which he desires to set up unless the new party is joined, the addition should be allowed. (*Vide Arumugam Coomaraswamy v. Andiris Appuhamy*⁽²⁾)

The plaintiff-respondent-petitioner filed an action in the District Court seeking a declaration of title to the land morefully described in the schedule to the plaint and for an interim injunction preventing the defendant-respondent-respondent from acquiring any part of the said land for road development.

The defendant-respondent-respondent in para 4 of the answer marked as X8 has admitted the title of the plaintiff-respondent-petitioner to the land described in the schedule.

Therefore the only dispute that the District Court has to decide is as to what extent the widening of the roadway be allowed.

The defendant-respondent-respondent, the Urban Council of Horana intended to widen the said roadway and the plaintiff-respondent-petitioner and several other residents expressed their written consent to the defendant-respondent-respondent to widen the said road way up to 12 feet subject to the condition that in view of the said widening severe damages should not be caused to their lands and buildings. Thereafter the boundaries for the said road widening was defined. The plaintiff-respondent-petitioner and six other residents realised that their building standing on their lands would be severely affected if the said road is widen up to 12 feet and as such by their letter dated 25.06.96 requested the Chairman of the defendant-respondent-respondent council to widen the said road only up to 10 feet. The widening of the said road was to be made consequent to the consent letter marked R2, to which all the land owners adjoining this road have given their consent. The document requesting the reduction of the width of the road to 10 feet is marked XIC to which also the adjoining land owners have agreed by placing their signatures to that document. The petitioner-respondents who have been added as parties are signatories to the above mentioned documents marked as R2 and XIC. Both these documents are documents affecting land but they are non-notarial documents. Therefore the validity of these documents could be contested in a Court of law in view of section 2 of the Prevention of Frauds Ordinance, and the provisions in Section 52 of the Urban Councils Ordinance.

When one considers the above facts specially the documents R2 and XIC which are part and parcel of the pleadings it is abundantly clear that the matter that the court has to decide is the validity of documents R2 and XIC which deal with the widening of the entirety of the road and not only regarding the widening of the road at the point adjoining the plaintiff-respondent-petitioner's land. Therefore we are unable to agree with the contention of the learned Counsel for the plaintiff-respondent-petitioner and the defendant-respondent-

respondent that the dispute is entirely a dispute affecting only the land of the plaintiff-respondent-petitioner. In fact the pleadings in this case specifically state that not only plaintiff-respondent-petitioner but all the other residents of lands adjoining the roadway have given their consent for the widening of the road. Therefore the widening of the road which is based on R2 is a matter which has to be decided among the signatories to R2 and XIC. Hence the petitioner-respondents whose names appears as 6, 7, and 8 in R2 and as 8, 9 and 10 in XIC as parties to these documents, their 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 that action.

As title to the land is admitted by the defendant the only question the Court has to decide is the width of the road in relation to R2 and XIC and therefore the petitioner-respondents have necessarily to be made parties to this action. Although R2 states that it is a document transferring title (අයිතිය පවරා දීමේ ලේඛනය) it has not been notarially executed. Further the Court may have to decide whether R2 is a "free gift of land" in terms of sections 52 of the Urban Council Ordinance.

For the above reasons, we hold that the presence of the petitioner-respondents before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the widening of the aforesaid road. Although the learned District Judge has not stated the facts and reasons comprehensively in her order in terms of Section 18(2) of the Civil Procedure Code, she has come to a correct conclusion.

In view of the above reasons we affirm the order of the learned District Judge dated 09.03.98 and dismiss the leave to appeal application with costs fixed at Rs. 2500/= payable by the plaintiff-respondent-petitioner to the petitioner-respondents.

JAYASINGHE, J. - I agree.

Application dismissed