

1940

*Present : Howard C.J. and Wijeyewardene J.*SELVADURAI *v.* RAJAH *et al.*139—*D. C. Jaffna, 11,503.*

Court's powers—Order to lay by case—Pending decision of another case—Identical matters in dispute—Civil Procedure Code, s. 839 (Cap. 86).

A Court has inherent power to lay by a case pending the decision of an action in another Court between the same parties in which the matters in dispute are identical.

A PPEAL from an order of the District Judge of Jaffna.

N. Nadarajah (with him *H. W. Thambiah*), for plaintiff, appellant.

No appearance for defendants, respondents.

Cur. adv. vult.

January 24, 1940. WIJEYWARDENE J.—

The plaintiff-appellant filed this action in July, 1937, in order to obtain a declaration of title to a property in Kandy and to have a deed No. 78 of April 27, 1927, executed by the second defendant in favour of the first defendant set aside as having been executed in collusion, with intent to defraud the plaintiff and other creditors of the second defendant.

The plaintiff did not take out summons on the defendants for some time and ultimately the summons was served on the defendants in October, 1938. The defendants filed answer in January, 1939, and the case was fixed for trial before the District Judge of Jaffna.

The first defendant in the meantime filed action L 141 in the District Court of Kandy in September, 1938, against the plaintiff and a tenant under the plaintiff in order to obtain a declaration of title in respect of the same property. The present plaintiff filed answer in that case and claimed that the deed on which the first defendant (the plaintiff in the Kandy case) based his title should be set aside. The second defendant in the present action has been made a party to that action. The issues in that case were framed in February, 1939, and the trial commenced in August, 1939. An examination of the record of the Kandy case shows that the plaintiff in that action (first defendant in this case) and two witnesses have given evidence and that the trial has been adjourned for January 30, 1940, for further hearing.

In July, 1939, the plaintiff in this action filed a petition and an affidavit and moved in the District Court of Jaffna that the present action be laid over pending the final decision of the Kandy case. The defendants opposed the application and the District Judge made order dismissing the application of the plaintiff as he thought he had no power under the Civil Procedure Code to grant the application of the plaintiff except with the consent of the defendants. The present appeal is preferred against that order.

The trial of this action has not commenced as yet in the District Court of Jaffna in view of the present appeal.

The question of law that arises on this appeal is whether a Court has no powers in matters of procedure other than those expressly provided for by the Code. There can be no doubt as to the answer to that question

especially in view of section 839 of the Civil Procedure Code which corresponds to section 151 of the Indian Code of Procedure. Section 839 provides :—

“Nothing in this Ordinance shall be deemed to limit or otherwise effect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

I do not think that the powers of a Court are strictly confined within the narrow limits of the express provisions of the Code. A Court has, and it is necessary that it should have, inherent powers to make orders which are absolutely essential in the interests of justice. A Court, no doubt, should guard against the exercise of such powers in an arbitrary and capricious manner and should invoke such powers only in matters for which no express provision is made by the Code. Even where a Court has recourse to such inherent powers it must be careful to see that its decision is in harmony with sound general legal principles and it is not inconsistent with the intentions of the Legislature.

In *Hukam Chand Boid v. Kamala Nand Singh*¹ Woodroffe J. said :

“The Court has in many cases where the circumstances require it acted upon the assumption of the possession of an inherent power to act *ex debito justitiae* and to do real and substantial justice for the administration of which it alone exists. It has been held that, although the Code contains no express provision on the matters hereinafter mentioned the Court has an inherent power *ex debito justitiae* to consolidate ; postpone pending the decision of a selected action ; to advance the hearing of suits ; to stay on the ground of convenience cross suits ; to decide one question and to reserve another for investigation, the Privy Council pointing out that it did not require any provision of the Code to authorise a judge to do what in this matter was justice and for the advantage of the parties These instances (and there are others) are sufficient to show, firstly that the Code is not exhaustive, and, secondly, that in matters with which it does not deal, the Court will exercise an inherent jurisdiction to do justice between the parties, which is warranted under the circumstances and which the necessities of the case require.”

It appears to me that the present appeal is one in which the Court should exercise its inherent powers. If the plaintiff's application is refused there will be two District Courts of the Island, each trying simultaneously a case between the same parties with regard to matters in dispute which are identically the same. The trial in the Kandy case has now reached its final stages and I think it necessary in the interests of justice that the case in the District Court of Jaffna, which has not come up for trial, should be laid by pending the final decision in the Kandy case.

I would allow the appeal with costs and order that the trial in this action be not taken up pending the final decision in D. C. Kandy L. 141.

HOWARD C.J.—I agree.

Appeal allowed.