

to file their objections in writing to the State Government through the Deputy Commissioner within six weeks from the publication of the notification under sub-section (1) of section 4 of the Act. The affected persons can file their objections within time only if they were made aware of the notification in time. As every one knows that even literate people do not come to know of the existence of a notification, what to talk of the illiterate villagers, so it hardly requires stressing that where ignorance of law is no excuse, the law that effects the citizens requires such publicity as may be considered sufficient to inform of its existence to a man in the street, and any provision requiring publication, of a fact which affects the citizens, in a given manner to achieve the aforesaid object of giving information to the affected persons, has to be considered mandatory one.

5) Since in the present case the intention to include the area of the petitioners' village within the municipal limits of the Municipal Committee had been only notified through a notification and not additionally through other manners envisaged by sub-section (1) of Section 4 of the Act, the notification Annexure P-1 is clearly vitiated and so is any final action taken thereon and for that reason Notification Annexure P-2 also stands vitiated. Both the notifications are, therefore, illegal and hence quashed.

(6) Before parting with the judgment it may be observed that it would be open to the State Government to issue fresh notifications in accordance with law, if it is so advised. The petitioners shall have their costs.

K. T. S.

REVISIONAL CIVIL

Before Prem Chand Jain and Gurnam Singh, JJ.

BARA HANUMAN TEMPLE DURGAIN,—*Petitioners.*

versus

GURBUX LAL MALHOTRA and others,—*Respondents.*

Civil Revision No. 854 of 1976

December 16, 1977.

Code of Civil Procedure (V of 1908)—Section 92 and Order 1 Rule 10(2)—Suit filed under Section 92—A new defendant in such

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suit—Whether can be added without the previous sanction of the Advocate-General—Such defendant whether can be added against the wishes of the plaintiff.

Held, that where an addition of a party does alter the nature of the suit under Section 92 of the Code of Civil Procedure 1908, a fresh sanction of the Advocate-General is necessary. Order 1, Rule 10 of the Code, however, gives a discretion to the Court to add a person as a defendant even without the consent of the plaintiff where it finds that the addition of a new defendant is absolutely necessary to adjudicate effectively and completely the matter in controversy between the parties. The power given to the Court under Order 1, Rule 10 of the Code is complete in all respects and it can join any person as plaintiff or defendant who ought to have been joined or whose presence before the court is necessary in order to enable it effectively and completely to adjudicate upon and settle all questions involved in the suit. (Paras 14 and 15).

Held, that as a rule, the court should not add any person as a defendant in a suit against the wishes of the plaintiff but the word 'may' in sub-rule (2) of rule 10 of Order 1 of the Code gives a discretion to the court and where it finds that addition of a new defendant is absolutely necessary to adjudicate effectively and completely the matter in controversy between the parties it will add a person as defendant even without the consent of the plaintiff. (Para 13).

Case referred by Hon'ble the Chief Justice Mr. R. S. Narula to a larger Bench on January 24, 1977 for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Gurnam Singh had finally decided the case on 16th December, 1977.

Petition under Section 115 of C.P.C. for revision of the order of the Court of Shri T. N. Gupta, Senior Sub-Judge Amritsar, dated 7th May, 1976 accepting the application under order 1 Rule 10 of the Code of Civil Procedure and ordering the plaintiffs to implead the applicant Gur Parshad as one of the defendants in the plaint.

V. P. Sarda, Advocate, for the Petitioner.

Ram Lal Aggarwal, Advocate with Amar Dutt, Advocate, for the Respondents.

JUDGMENT

Gurnam Singh, J.

(1) After obtaining sanction of the Advocate-General, Punjab, under section 92, Civil Procedure Code (hereinafter referred to as

the Code), Bara Hanuman Temple Durgian (hereinafter referred to as the Temple) through Durga Dass and Tilak Raj sons of L. Paras Ram who was the founder of the trust, filed the suit for the appointment of Gurbux Lal Malhotra, Gauri Shankar Sharma and Madan Lal Khanna as trustees of the Temple, which is a religious and charitable trust, as all the three trustees appointed by Shri Paras Ram had died. In that suit, one, Gur Parshad filed an application under Order 1, Rule 10 of the Code, for being impleaded as a defendant, alleging that he along with Rattan Chand and Shori Lal had been managing the Temple for the last four years and nine months, that after the death of Rattan Chand, he and Shori Lal had been continuing to manage the Temple as trustee managers and that after the death of Shori Lal, which took place in February, 1974, he alone managed the Temple and was in possession of its properties. He further alleged that the suit filed is a collusive one and has been filed with a view to grab the administration of the Temple and that in his absence the suit could not be decided effectively and completely. The trial Sub-Judge accepted the application of Gur Parshad and ordered the plaintiff to implead him as one of the defendants in the plaint. Being aggrieved with the order of the learned Senior Sub-Judge for impleading Gur Parshad, as one of the defendants, the plaintiff came up in revision to this Court which was heard by Hon'ble the Chief Justice. After hearing the parties, the Hon'ble the Chief Justice, feeling that important legal issues are involved in the case, referred the matter to a larger Bench and that is how this Civil Revision No. 854 of 1976 has come up before us.

(2) The order of the learned Senior Sub Judge impleading Gur Parshad as a defendant in the case has been challenged by the plaintiff on the following three main grounds :

- (i) the Advocate-General having recorded a finding at the time of granting permission to sue under section 92 of the Code to the effect that "Rattan Chand had no authority under the law to join Shri Gur Parshad and Shri Shori Lal as co-trustees", the Court has no jurisdiction to permit Gur Parshad being joined as a defendant to the suit;
- (ii) Permitting the impleading of Gur Parshad as defendant in the suit amounts to going behind the sanction of the Advocate-General and no suit under section 92 can be allowed to be maintained against any person against whom

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permission to sue has not been granted by the Advocate-General and

- (iii) Gur Parshad respondent has no *locus standi* to claim to be added as a defendant. He is not a necessary party to the suit, and, therefore, he cannot be permitted to be added as a defendant against the wishes of the plaintiff-petitioner who is *dominus litus* and has control of the suit.

(3) Admittedly Gur Parshad was not a trustee appointed by L. Paras Ram, the founder of the trust. The contention of Gur Parshad is, that he had been managing the properties of the Temple along with L. Rattan Chand, that even after the death of L. Rattan Chand, he continued to do so since February, 1974 and is in possession of the properties of the Temple, that he had been defending some legal proceedings in which the plaintiff was a party and, therefore, he is very much concerned and interested in the present suit and that the suit cannot be effectively and completely decided without his presence.

(4) At the time when the learned Advocate General, Punjab, decided the application of Sarvshri Durga Dass and Tilak Raj sons of L. Paras Ram, under section 92, Civil Procedure Code, L. Rattan Chand, one of the trustees appointed by Lala Paras Ram was alive. Lala Rattan Chand had put in an application in reply, in which he had stated that Shri Gur Parshad was taken as a co-manager in place of Shri Banji Dhar and Shri Shori Lal and Shri Gur Parshad were managing the affairs of the Temple. It was in this background, that the learned Advocate-General, while granting permission, to Sarvshri Durga Dass and Tilak Raj, for filing the suit under section 92 of the Code observed that "Shri Rattan Chand had no authority under the law to join Shri Gur Parshad and Shri Shori Lal as co-trustees without a direction from a competent Court to that effect". This observation of the learned Advocate-General does not amount to a finding that Gur Parshad was not a necessary party in this case. Order 1, rule 10 of the Code empowers the Court to direct that other persons be made parties so that complete justice may be done and the rights of all are finally determined.

(5) Now it is to be seen as to whether in a suit filed under Section 92 of the Code, any other person can be added as a defendant

without the previous sanction of the Advocate-General. This point was considered by Bhandari, C.J., in *Kidar Nath Datt and others v. Kishan Das Bairagi and others*, and it was observed that where such addition alters the nature of the suit, a fresh sanction of the Advocate-General is necessary. This matter also came up for consideration before a Division Bench of Rajasthan High Court in *Ghanshyamlalji v. Collector, Udaipur and others*, (2) wherein it was observed that :

“One of the objects of rule 10 of Order 1 is to enable the court to try and determine once for all material questions, common to the parties and to third parties and not merely questions between the parties to the suit.”

(6) In the case of *Ghanshyamlalji*, (supra), the suit was filed under section 92 of the Code and in that suit Goswami Ghanshyamlalji filed an application before the District Judge, in whose Court the suit was pending, under Order 1, Rule 10 of the Code, praying that he may be impleaded as a party. His application was rejected by the District Judge on the ground that it was open to him to bring a separate suit to vindicate his private rights. The Division Bench of the Rajasthan High Court, after discussing the law on the point, came to the conclusion that the learned District Judge should have allowed the application of the applicant for being joined as a party under Order 1, Rule 10 of the Code and accordingly the revision filed by Ghanshyamlalji was allowed.

(7) The case of *Suresh Singh and others v. Legal Remembrancer to U.P. Government and another*, (3) was also referred to in the case of *Ghanshyamlalji*, (supra), In the case of *Suresh Singh and others*, (supra), it was held that :—

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Such person should be added as defendant in suit in order to enable Court to properly and completely adjudicate upon questions involved in suit.”

(1) A.I.R. 1957 Pb. 106.

(2) A.I.R. 1958 Rajasthan 161.

(3) AIR 1937 Oudh 229.

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(8) In *Vikrama Das Mahant v. Daulat Ram Asthana and others*, (4), the Hon'ble Judges observed that:

“Therefore, a person who has been in *de facto* possession and management of the Asthan and its properties for a long time claiming to be its trustee under the decree of a Court, valid or invalid, has sufficient interest to maintain proceedings for the warding off of a cloud cast by the defendant's action against the interests of the Asthan.”

(9) In *Gobinda Chandra Ghosh alias G. Ghosh and another v. Abdul Majid Ostagar and others*, (5), it has been observed that :

“Once a suit is validly commenced after obtaining sanction as is necessary under Section 92 no fresh sanction is necessary at a further stage of the suit if the amendment of the plaint or the addition of the party does not alter the nature of the claim in the suit, but when such amendment or addition of party does change the nature or scope of the suit, afresh sanction is required.”

(10) In *Vaithilingam v. S.M. R.M. Ramalingam Pillai and another*, (6), it has been observed that :

“It is open to a Court to add a party as defendant in a suit under section 92, Civil P.C. just as in any other suit. Its right to do so is regulated by O. 1 R. 10.”

(11) The learned counsel for the petitioner contended that no party can be added in a suit against the wishes of the plaintiff. He further pointed out that no person can join as defendant without the previous permission of the Advocate-General. He relied upon *Johnson D Po Min and another v. U Ogh and others*, (7), wherein it has been held that :

“Plaintiffs are not entitled to claim against strangers to trust either declaration of title or possession or any other relief—
Strangers are not necessary parties to such suit and if

(4) AIR 1956 S.C. 382.

(5) AIR (31) 1944 Calcutta 163.

(6) AIR 1918 Madras 1071.

(7) AIR 1932 Rangoon 132.

plaintiffs have wrongly impleaded them they cannot pray in aid provisions of Civil P.C. (1908), O. 1 R. 3 or R. 10"

(12) He also relied upon *Abdur Rahim and others v. Syed Abu Mahomed Barkat Ali Shah and others*, (8), wherein it was observed that :

"A suit in respect of trust property was instituted by seven persons with the sanction of Advocate General. It was subsequently amended without his sanction by adding strangers to the trust as defendants and by adding prayers for relief not covered by section 92. The suit was later on compromised by six out of the seven plaintiffs.

Held, that the nature of the suit was changed, that it ceased to be one of representative character and the decree based on the compromise, however, binding as against the contesting parties, cannot bind the rest of the public. Section 11, Expl. 6, has no application to such a case."

(13) As a rule, the Court should not add any person as a defendant in a suit against the wishes of the plaintiff but the word "may" in sub-rule (2) of rule 10 of Order 1 of the Code, gives a discretion to the Court and where it finds that the addition of a new defendant is absolutely necessary to adjudicate effectively and completely the matter in controversy between the parties, it will add a person as defendant, even without the consent of the plaintiff. The contention of the learned counsel for the plaintiff, therefore, that Gur Parshad could not be joined as defendant is not acceptable.

(14) The power given to the Court under O. 1 R. 10 of the Code is complete in all respects and it can join any person as plaintiff or defendant, who ought to have been joined or whose presence before the Court is necessary in order to enable it effectively and completely to adjudicate upon and settle all questions involved in the suit.

(15) After considering the authorities on the point, we have reached the conclusion that where an addition of a party does alter the nature of the suit under section 92 of the Code, a fresh sanction of the Advocate-General is necessary. In the instant case the observation of the learned Advocate-General, while granting the sanction, that L. Rattan Chand had no authority under the law to

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join Gur Parshad as a co-trustee will not amount to a finding that Gur Parshad was not a necessary party to the suit and if Gur Parshad is added as a defendant in the suit, that will not amount to going behind the sanction of the Advocate-General.

(16) Now it is to be seen as to whether Gur Parshad has any *locus standi* to claim to be added as a defendant and as such is a necessary party. It is not disputed that Gur Parshad has been looking after the property of the Temple even along with L. Rattan Chand, who was one of the trustees. The contention of Gur Parshad is that he has been managing the Temple as a trustee-cum-manager and that in the legal proceedings in the past he has been representing and looking after the interests of the Temple. Further according to him, he is a person very much concerned and interested in the suit and without his presence as a party, the suit cannot be effectively and completely decided. The suit filed by the plaintiff is for the appointment of new trustees as all the three trustees appointed by L. Paras Ram, the founder of the Trust, have died. In the plaint, in para No. 13, it has been mentioned that Shri Rattan Chand, one of the trustees, in his reply to the application under section 92 of the Code before the Advocate-General had stated that he had joined with him Sarvshri Gur Parshad and Shori Lal as co-trustees. Thus it is evident that Gur Parshad has been looking after the property of the plaintiff Temple. His allegation is that the suit has been filed by the plaintiff, in collusion with the impleaded defendants, to secure orders of the Court regarding its (Temple's) administration at his back in order to exclude him (Gur Parshad) from its management. Since the suit is for the appointment of trustees and Gur Parshad, who has been looking after the affairs of the Temple, wants to defend the claim of the plaintiff, he (Gur Parshad) would be in a better position to explain to the Court as to whether the appointment of the defendants already impleaded, would be in the interest of the plaintiff or not. Moreover, if he is added as a defendant, the cause of action and the nature of the suit will not be altered so as to enlarge the scope of litigation. The order of the learned Senior Sub-Judge impleading Gur Parshad as defendant, is, therefore, upheld and this revision petition is dismissed.

K.T.S.