

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Phillips.

1920,
January 21.

JEKKAM REDDI, SESHADRI REDDI AND TWO OTHERS
(DEFENDANTS), APPELLANTS,

v.

SIR S. SUBRAMANIA AIYAR, K.C.I.E., AND THREE OTHERS
(PLAINTIFFS NOS. 1 AND 3 TO 5), RESPONDENTS.*

Civil Procedure Code (Act V of 1903), Sec. 92—Suit by two persons, one of whom had no interest under the section—Leave under the section obtained subsequently by two others having such interest—Latter joined as additional plaintiffs—Suit, whether maintainable.

Where a suit was instituted under section 92, Civil Procedure Code, by two plaintiffs, one of whom had no interest such as that required by that section, and two other persons having the requisite interest subsequently obtained leave under the section and were joined as additional plaintiffs in the suit.

Held, that the suit was maintainable under section 92 of the Code, and ought to be tried on the merits.

Ramayyengar v. Krishnayyengar, (1887) I.L.R., 10 Mad., 185, applied.

APPEAL against the decree of K. SUNDARAM CHETTIYAR, the Temporary Subordinate Judge of Nellore, in Original Suit No. 61 of 1917 (Original Suit No. 47 of 1917 on the file of the District Court of Nellore).

The present suit (Original Suit No. 47 of 1917) was instituted under section 92, Civil Procedure Code, in the District Court of Nellore, on 27th July 1917, for removal of the defendants from trusteeship and the framing of a scheme in respect of a temple in the village of Vodur in Gadur taluk in Nellore district. The suit was originally instituted by two plaintiffs, one of whom, (the first plaintiff, Sir S. Subramania Aiyar, who was the President of the Dharma Rakshana Sabha) was a person permanently residing in Mylapore, Madras, and had not visited the temple. The defendant, *inter alia*, objected in his written statement, dated 5th November 1917, to the maintainability of the suit on the ground that one of the two plaintiffs (*viz.*, the above-said first plaintiff) had not the interest required by section 92, to obtain leave and institute the suit. Thereupon, two other persons applied to the Collector of Nellore for leave to institute this very suit and the Collector granted sanction.

* Appeal No. 182 of 1919.

The suit was transferred to the file of the Sub-Court of Nellore and was therein numbered as Original Suit No. 61 of 1917. The two persons who had subsequently obtained leave applied to the Sub-Court to be joined as additional plaintiffs in the suit. The Court passed an order joining them as additional plaintiffs in the suit. The Court framed issues as to the competency of the first plaintiff to obtain leave and to institute the suit, as also additional issues whether the sanction obtained by plaintiffs Nos. 3 and 4 subsequent to the institution of the suit, would make the suit a validly instituted suit, and also whether the sanction granted to those plaintiffs was proper. The lower Court held that the suit was not properly instituted and could not be validated by the subsequent sanction obtained by the additional plaintiffs and accordingly dismissed the suit without costs. The defendants preferred this appeal against the decree disallowing their costs; the plaintiffs preferred a memorandum of objections, and contended that the suit was maintainable and ought to have been decided on the merits.

T. V. Venkatarama Ayyar and *K. N. Kumaraswami Ayyar* for appellants.

P. R. Ganapati Ayyar for respondents.

The JUDGMENT of the Court was delivered by

PHILLIPS, J.—One of the plaintiffs in this suit which was instituted under section 92, Civil Procedure Code, was found to have no interest such as that required by this section. Thereupon, two other men who had the requisite interest applied to the Collector and obtained sanction to institute this very suit. They were then added as third and fourth plaintiffs. Objection was, however, taken by the defendants, to the effect that the suit was bad as laid and must be dismissed and that the requirements of section 92 were not satisfied by adding the third and fourth plaintiffs in the same suit. The learned Subordinate Judge heard the objection, discussed it and came to the conclusion that the suit was not properly instituted and dismissed it. There is a ruling of this Court in *Ramayyengar v. Krishnayyengar* (1), which would cover the present case, but it was argued that in the old Code no such clause as that in sub-paragraph (2) of

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section 92 occurred in section 539 and that the latter paragraph makes a difference. We find, however, that *Ramayyengar v. Krishnayyengar*(1), has been followed in some very recent cases of this Court decided under the new Code. One of them is a decision of OLDFIELD and BAKEWELL, JJ., in Appeals Nos. 310 and 373 of 1918 and the other is the judgment of SPENCER and KRISHNAN, JJ., in *Ambalavana Pandara Sannadhigal v. The Advocate-General of Madras*(2). On the other hand, there is a ruling of the Bombay High Court in *Darves Haji Mahamad v. Jainudin*(3), contrary to the view taken in these cases. And the Allahabad High Court seems to have taken the same view of the law as the Bombay High Court. But the matter being purely one of procedure we think we ought to follow the rulings of this Court. The judgment of the Subordinate Judge is set aside and the case will be remanded to him for disposal on the merits, the memorandum of objections being allowed.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

KALATHY AMMALU AMMA AND THREE OTHERS, LEGAL REPRESENTATIVES OF THE DECEASED APPELLANT (SECOND DEFENDANT),

v.

KOLLANGARTH RAMAN NAIR AND NINE OTHERS (PLAINTIFFS NOS. 1 TO 4, DEFENDANTS NOS. 10 TO 14 AND LEGAL REPRESENTATIVES OF THE DECEASED FIFTEENTH DEFENDANT), RESPONDENTS.*

Malabar Compensation for Tenants' Improvements Act (I of 1886), Sec. 19— Compensation for tenants' improvements—Contracts made after Act, more favourable to tenant than the Act—Contract, or Act enforceable—Value whether at the time of eviction, a date of contract, payable.

Section 19 of the Malabar Compensation for Tenants' Improvements Act, does not prevent the tenant from claiming compensation under a contract made after passing of the Act, if it is more favourable to him than the Act.

The value of improvements payable to a tenant is their value at the time of eviction.

Kerala Varmah Valia Rajah v. Ramunni, (1893) 3 M.L.J., 51 (F.B.), followed.

(1) (1887) I.L.R., 10 Mad., 185.

(2) (1920) I.L.R., 43 Mad., 707.

(3) (1906) I.L.R., 30 Bom., 603.

* Second Appeal No. 104 of 1919.