APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Pakenham Walsh.

PITCHAYYA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

VENKATAKRISHNAMACHARLU AND ELEVEN OTHERS (DEFENDANTS 1, 2, 4 TO 11 AND LEGAL REPRESENTATIVE OF THIRD DEFENDANT), RESPONDENTS.*

1929, September, 13.

Civil Procedure Code (Act V of 1908), s. 92—Sanction for a "scheme suit" obtained by three—Suit filed by two only, including other reliefs—Maintainability of.

A suit under section 92, Civil Procedure Code, must be instituted by *all* those who obtained the sanction; if not, it is invalid and the defect cannot be cured by impleading such of those who have not joined as plaintiffs, as defendants to the cause; *Maddala Bagavannarayana* v. *Vadapalli Perumallacharyulu*, (1915) 29 M.L.J., 231 and *Venkatesha Malia* v. *Ramayya Hegade*, (1914) I.L.R., 38 Mad., 1192, followed. Considerations before granting sanction pointed out.

Where a sanction was given under section 92, Civil Procedure Code, to file "a scheme suit in respect of the affairs" of a temple, no relief can be given in respect of any other matter, e.g., removal of the trustee or the appointment of new trustees or receiver. *Srinivasa* v. *Venkata*, (1887) I.L.R., 11 Mad., 148, followed.

APPEAL against the decree of the Court of the Additional Subordinate Judge of Bapatla in Original Suit No. 8 of 1924 (Original Suit No. 55 of 1923 in the Court of Subordinate Judge of Bapatla).

The facts appear from the judgment.

Advocate-General (*A. Krishnaswami Ayyar*) with *P. V. Vallabhacharyulu* and *K. Viswanatha Sastri* for appellants.—The evidence points to a dedication of property only for the God in the temple and not for the benefit of the archakas. A

* Appeal No. 418 of 1924.

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scheme suit is not like a private suit. Death of parties does not abate it; nor the neglect of plaintiffs to conduct the suit. So long as the minimum number of two file the suit, there is no defect of parties. The fact that one of the three persons who got the sanction did not join as a plaintiff but was made a defendant does not vitiate the suit, but cures the defect, if any. He did not repudiate the suit in the lower Court; nor does he do so now; there is now a petition here to transpose him as plaintiff. A suit for a scheme is a substitute for a representative suit; the words in Romilly's Act are "any two or more"; *Kumaraswami Asari* v. *Lakshmana Goundan*(1), *Alagappa* v. *Muthiah*(2), *Sayyed Gulam Gouse Sha Sahib Kadiri* v. *Dost Muhammad Khan Sahib*(3), *Jekkam Reddi* v. *Sir S. Subramania Ayyar*(4), *Raja Anand Rao* v. *Ramdas Daduram*(5), *Arumuga Thambiran* v. *Namasivaya Pandara Sannadhi*(6), *Kunhan* v. *Moorthi*(7). *Maddala Bagavannarayana* v. *Vadapalli Perumallacharyulu*(8) is wrong.

S. Varadachari with *V. Govindarajachari* and *K. Kameswara Rao* for respondents.—The suit is not a *bona fide* one; that is why the third petitioner did not join in filing the suit. The sanction is only for filing a suit for a scheme; but the prayers are also for removal of the defendants from trusteeship, appointment of new trustees and for a receiver. The suit brought being different from the one sanctioned, it was rightly dismissed, *Srinivasa* v. *Venkata*(9). The policy of requiring sanction under section 92 is to prevent frivolous and vexatious suits by paupers against honest trustees; *Venkatasesha Malia* v. *Ramayya Hegade*(10). This case and *Maddala Bagavannarayana* v. *Vadapalli Perumallacharyulu*(8) hold that, unless all those who got the sanction join as plaintiffs, the suit should be dismissed. The endowment is for the support of the archakas.

Advocate-General in reply.—Section 92 does not give a personal right. It does not contain the word "sanction" but only "consent." Consent to three is consent to two. Sanction to file a scheme suit enables the inclusion of other reliefs, e.g., removal of trustees, *Venkatacharyulu* v. *Suryanarayana*(11).

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(1) (1927) 54 M.L.J., 629.
(2) (1917) I.L.R., 41 Mad., 237.
(3) (1924) 47 M.L.J., 745.
(4) (1920) I.L.R., 43 Mad., 720.
(5) (1920) I.L.R., 48 Calc., 493 (P.C.).
(6) (1925) I.L.R., 48 Mad., 688.
(7) (1910) I.L.R., 34 Mad., 406.
(8) (1915) 29 M.L.J., 231.
(9) (1887) I.L.R., 11 Mad., 148.
(10) (1914) I.L.R., 38 Mad., 1192.
(11) (1928) 27 L.W., 42.

JUDGMENT.

This appeal arises out of a suit filed under section 92 of the Civil Procedure Code by two plaintiffs who obtained the sanction of the Collector. The Collector's sanction which is filed as Exhibit A in the case runs as follows:—

"Permission under section 92, Civil Procedure Code, is granted to the three persons named below to bring a scheme suit in respect of the affairs of the temple of Sri Varadarajaswami Varu of Pedapullivaru Village, Repalle Taluk, which are reported to be mismanaged by the present trustee:—

(1) Kavata Venkata Subrahmanyan,
(2) Davuluri Pichayya,
(3) Kosaraju Reddayya.

Time six months.

2. The Tahsildar, Repalle, will please report the result at the end of the period."

This sanction was obtained without notice to the defendants but this makes no difference as regards the validity of the sanction. Having got the sanction, two out of the three persons namely, Pichayya and Reddayya, filed the suit. Though the sanction was only given to bring a scheme suit, the prayers in the plaint were—

(1) for a scheme to be framed for the general management of the temple,

(2) for the removal of defendants 1 to 10,

(3) for the appointment of new trustees,

(4) for an order vesting the temple properties in the trustees appointed by the Court,

(5) for the appointment of a receiver and other reliefs.

Obviously, except the first prayer, all the other prayers are outside the scope of the sanction. No relief could have been granted with reference to them. See *Srinivasa* v. *Venkata*(1).

(1) (1887) I.L.R., 11 Mad., 148.

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Venkatasubramaniam who was the first of the three persons to whom sanction was given did not join as a plaintiff and he was impleaded as the eleventh defendant. It is alleged in paragraph 12 of the plaint that the eleventh defendant was added as a *pro forma* defendant as he was not then available to join as plaintiff. An application is filed before us to transfer him as an appellant. In the affidavit filed by Venkatasubramaniam all that is stated is that after the sanction was obtained he was obliged to leave Pedapulivaru on private business and could not co-operate with the other two persons in filing the suit and that as he was not available even on the last day of limitation the suit had to be filed by the other two persons. He says that he allowed the suit to go *ex parte* as he was willing that it should be prosecuted. The counter-affidavit filed denies the fact that Venkatasubramaniam was not in Pedapulivaru on the date the suit was filed and states that the real reason was that the present appellants and Venkatasubramaniam applied for sanction to file scheme suits both in regard to the temple in question and a Siva temple in Pedapulivaru, that Venkatasubramaniam was interested in the Siva temple, that after obtaining the sanction the appellants refused to file a scheme suit in regard to the Siva temple, for, the archakas of the temple were their friends and belonged to their faction, and that as the present appellants refused to join him in filing the suit with regard to Siva temple, Venkatasubramaniam declined to join the appellants in filing the present suit.

Although the defendants took the objection in the lower Court that the suit was bad because only two of the three persons to whom sanction was given filed the suit and although issues were raised covering that contention, no application was made either by Venkatasubramaniam or by the other two plaintiffs to

transpose Venkatasubramaniam as a plaintiff in the lower Court.

The Subordinate Judge dismissed the suit. He found on the facts that no misconduct was proved against the defendants (archakas) and he held that the suit as laid was bad as two alone out of the three persons to whom sanction was given could not file the suit. In paragraph 10 of his judgment, the learned Subordinate Judge says :

"The plaintiff's witnesses themselves have admitted that the defendants have been doing the nitya naivedya, deeparathana, tirunakshatralu, and Pakshotsava or Ekadasi utsavams. They won't admit that the Masotsva and Sukravarlu sevas have been done. But these witnesses of the plaintiffs are either partisans of the plaintiffs or are relations of the plaintiffs and most of them have come forward without summons. There is ample evidence on the side of the defendants, which I believe to be true, that the sukravara sevalu and the Masotsvam or the seva on Sravana Nakshatra day in each month also have been done regularly by the defendants 1 to 10 in addition to other sevas not referred to in Exhibit 1 (original trust deed). I therefore find that the defendants 1 to 10 have been doing regularly all the services and sevas referred to in Exhibit 1."

He finds that the defendants are not liable to be removed even assuming that Exhibit 1 creates a trust in favour of the deity.

So far as the first plaintiff is concerned, it is clear from his evidence that he has instituted this suit because of his enmity with the defendants and although in paragraph 8 of the plaint various charges of misconduct have been made, his evidence shows that some at least of the main charges are false. He admits that he and all the defendants have not been on speaking terms for the last 16 years, that during this period he never asked the archakas why they were not properly doing the necessary things for the temple, that for the last 16 years the archakas have not been inviting the karnam

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and the other village officials for the festivals, that the first defendant complained against him for making excess collections as the assistant karnam of the village and that he lost his branch postmastership on account of complaints made by the defendants. The second plaintiff did not venture to give evidence although he alleged several acts of misconduct in the plaint.

We are not satisfied that the non-joinder of Venkatasubramaniam as a plaintiff was due to his absence from the village. If his affidavit is true, he left the village, after the sanction was obtained, on private business and could not co-operate with the other two persons in filing the suit in the lower Court. He says that he was absent even on the last day when the suit had to be filed because the sanction enured only for six months. If his affidavit is true, beyond obtaining the sanction, he took no part in the preparation or the filing of the plaint. This fact would be material in dealing with the other question as to whether the suit is properly framed. The probabilities point to the reason given by the archakas in the counter-affidavit being a true one. We do not think that sufficient reasons have been made out for transposing the eleventh defendant as a plaintiff even assuming that such a transposition would cure the original defect in the institution of the suit. We can find little bona fides in the matter. Although the sanction was only for filing a scheme suit, various charges of misconduct were made in the plaint with a view to support the prayer for the removal of the archakas for which no sanction was given, and these charges have been found to be false. Even on the first plaintiff's own evidence some of the charges could not be sustained. Enmity with the defendants and not a bona fide desire to safeguard the interests of the temple seems to be the main motive for the suit. However, if the plaintiffs can

have a good cause of action, motive would be immaterial, but we refer to this only as a ground for not exercising our discretion in the matter.

As regards the maintainability of the suit, we think that the suit by some only of the persons to whom sanction was given under section 92 would not lie. The object of requiring sanction or permission before such suits are instituted under section 92 is to safeguard not only the rights of the public but also the rights of the institution and the trustees. The suit being a representative suit, it is necessary to see that the persons who come forward are persons who have an interest in the temple and persons who can be safely entrusted with the conduct of the suit. Even though the whole public are technically parties, still the plaintiffs who file the suit have the conduct of the suit and very large powers in the shaping and the conduct of the suit. As a matter of general experience, the public leave it to the plaintiffs to conduct all the proceedings and to take the various steps necessary for its successful prosecution. It is also for the benefit of the institution and of the trustees, because it affords a safeguard against impecunious improper persons coming as plaintiffs and involving the trust in litigation and expense, and it is also a safeguard that the persons are substantial persons from whom if the suit fails the costs can be recovered and not merely men of straw. If two out of three or more persons to whom sanction was given can file a suit, it may be that the substantial persons having got the order take no further part leaving the trustees and the institution remediless as regards the recovery of costs. The authority giving the sanction must consider the various aspects before giving the sanction and one important consideration should be as regards the status and position of those who come forward to represent the community.

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We may in this connexion state that it would be more desirable, before giving the sanction, that notice should be given to the institution or the trustees, although it is not obligatory.

In *Sayad Hussein Miyan* v. *Collector of Kaira*(1), JARDINE and RANADE, JJ., observed :

"Turning to India it is obvious that the requirement of sanction protects trust funds and the trustees also from vexatious suits, as so great an officer as the Advocate-General will not sanction suits without enquiry about the motives, the merits, the expense, and such bars as limitation."

In *Venkatesha Malia* v. *Ramayya Hegade*(2), SANKARAN NAIR and SPENCER, JJ., observed :

"Such sanctions for instituting suits against trustees have to be construed strictly without enlarging their scope, the object of requiring sanction being to protect managers from vexatious suits . . . Cases may occur in which it might be inadvisable to grant sanction to a particular individual either on account of his character, personal motives, or his solvency, and yet if he joined with some one whose very name would be a guarantee against the suit being improperly conducted, a Court would be justified in granting a joint sanction where it would have refused leave to the single applicant."

Having regard to these considerations we think that where permission or sanction is given by name to more than two persons, that power should be exercised by them all.

So far as the authorities go, they support this view. The question directly arose for consideration in *Maddala Bhagavanmarayana* v. *Vadapalli Perumallacharyulu*(3), where SIR JOHN WALLIS, C.J. and SESHAGIRI AYYAR, J., held that where sanction is given under section 92 of the Civil Procedure Code to more than two persons, two of them alone cannot sue. It appears from the facts of that case that four individuals obtained the sanction of

(1) (1897) I.L.R., 21 Bom., 257. (2) (1914) I.L.R., 38 Mad., 1192.
(3) (1915) 29 M.L.J., 231.

the Collector under section 92 of the Civil Procedure Code and that two of them alone brought the suit alleging that the other two had been gained over by the defendants and they refused to join in the suit. The contention was that, sanction having been given by the Collector to four persons, two of them alone cannot sue without obtaining fresh sanction. The learned Judges, after referring to the terms of section 92, observed :

"We think the language used shows that the persons authorized to sue are all the persons to whom the consent has been given and not any two of them. On the opposite contention, there might be competition between the various persons authorized as to who should sue. Besides, the provision for giving consent to two or more persons shows that the legislature considered that in some cases it might not be desirable for only two to sue. In this connection it is worth mentioning that Romilly's Act, upon which this section was founded, enabled any two persons interested to apply, and that here the legislature has empowered any two or more persons with the consent of the Advocate-General."

A similar question arose as regards the Religious Endowments Act where also sanction was necessary. In *Venkatesha Malia* v. *Ramayya Hegade*(1), it was held that where sanction to sue is given to two persons under section 18 of the Religious Endowments Act, one of them cannot sue alone and that the sanction granted under section 18 was a condition precedent to the exercise of the right of suit. Section 14 of the Act empowers any person or persons interested in the institution to sue in case of breaches of trust, etc. Section 18 requires previous leave to be obtained from Court. It appears from the report of the case that when the suit came on for trial before the judge who gave the sanction, though no issue was raised, a preliminary objection was taken that the suit was bad

(1) (1914) I.L.R., 38 Mad., 1192.

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for the non-joinder of the other sanction-holder and the Judge upheld the contention.

Reference has been made by the learned Advocate-General to cases of suits by trustees; but those cases have no application as in such cases it is the trust which has the right of action and is the plaintiff and it is sufficient if all the trustees are present before the Court as plaintiffs or defendants. We may mention that even in the case of trusts, where the act which gives rise to the cause of action is an act which has to be done by all the trustees together or in consultation with each other, e.g., putting an end to a lease, it has been held that one or more trustees cannot by simply joining the other trustees give rise to a valid cause of action where the other trustees have not been consulted before the suit was filed. Similarly, cases where it has been held that there is no abatement where one of two plaintiffs who obtains sanction dies or cases where it has been held that you can transpose parties after the suit is filed or allow new persons to come on as additional plaintiffs, would have no application to cases like the present where the question is whether the suit has been rightly instituted. It is only after a suit has been rightly instituted, the public become constructive parties to the suit. If the suit is not properly instituted, there is no question of the Court treating the suit as one which is properly instituted and then remedy any defects by the addition of parties.

We are of opinion that the suit was not properly instituted and should be dismissed on that ground.

In the view we take of the law on this question it is not necessary for us to consider the other question as to whether there is a trust in favour of the temple, the Archakas being only trustees or whether there is a gift to the Archakas subject only to their performing the

services mentioned in Exhibit 1 and any surplus income can be appropriated by them for their own use.

The appeal fails and is dismissed with costs of defendants 1 to 10. On the Memorandum of Objections, we allow Rupees 250 as vakil's fees in the lower Court.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Cornish.

J. A. SANKARA RAJU (APPELLANT IN BOTH APPEALS),

v.

KUPPAMMAL AND THREE OTHERS (RESPONDENTS IN O.S.A. No. 75 OF 1929), AND THE OFFICIAL ASSIGNEE, MADRAS, AND SIX OTHERS (RESPONDENTS IN O.S.A. No. 79 OF 1929).*

1929, October, 16.

Presidency Towns Insolvency Act (III of 1909) Second Schedule, art. 18—Validity of sales—Power of Court to consider.

The power of the Court to inquire under article 18 of the Second Schedule to the Presidency Towns Insolvency Act involves also the power to consider the validity of sales, and, if a proper case is made out, not to confirm sales. If there is no reason to set aside, the Court merely confirms the sale.

ON APPEAL from the orders of WALLER, J., dated respectively 9th September and 5th August 1929 and passed in Applications Nos. 1120 of 1929 and 444 of 1929 in I.P. No. 266 of 1928 in the exercise of the Insolvency Jurisdiction of the High Court.

S. Duraiswami Ayyar (*A. K. Ramachandra Ayyar* with him) for appellant in both appeals.

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* Original Side Appeals Nos. 75 and 79 of 1929.