APPELLATE CIVIL.

Before Mr. Justice Young and Mr. Justice Baguley.

V.P.R.V. CHOKALINGAM CHETTY AND ONE
v.
SEETHAI ACHA AND OTHERS.*

1924
July 1.

Civil Procedure Code, Order 41, *Rules* 20 *and* 23—*Person joined by Court under Rule* 20 *must be person interested in the appeal—Suit dismissed as against several defendants—Appeal against only some of them*—Res Judicata *where the respondents derive their title through the defendants not appealed against.*

Where in an action against several defendants, the trial Court dismissed the plaintiff's suit and the plaintiff preferred an appeal against some of the defendants but omitted to join in the appeal the defendants from whom the defendants joined derived their title, *held*, the title of the defendants joined being derived through the defendants omitted, could not be attacked in the appeal.

Held, further, that under such circumstances, the Court cannot join the defendants left out by the appellant, as they were not parties interested in the result of the appeal then before the Court.

Held, further, that the power of the Court to add parties under Order 41, Rule 20, is discretionary and that the Court will not exercise the same in favour of an appellant who has failed to be vigilant.

Amlook Chand Parrack v. *Sarat Chunder Mukerjee*, 38 Cal., 913 ; *Girish Chander Lahiri* v. *Sasi Sekhareswar Roy*, 33 Cal., 329 ; *Subramanian Chetty* v. *Veerabadran Chetty*, 31 Mad., 442—*distinguished.*

Clark—for the Appellants.

Das with *Jeejeebhoy*, *Foucar* and *Kyaw Myint*—for the Respondents.

YOUNG and BAGULEY, JJ.—This judgment covers Civil First Appeals Nos. 242 and 243 of 1922, arising out of Civil Regular Nos. 18 and 19 of 1921, of the District Court, Pegu, both of which cases were disposed of in one judgment.

---

* Civil First Appeal No. $\frac{242}{243}$ of 1922 against the decree of the District Court of Pegu in Civil Regular No. $\frac{18}{19}$ of 1924.

1924

V.P.R.V. CHOKALINGAM CHETTY AND ONE v. SEETHAI ACHA.

YOUNG AND BAGULEY, JJ.

The litigation started with the winding up of a firm known as K.P., which used to carry on business in Rangoon, Pegu and other places. It seems to have got into financial difficulties about the year 1908, at which time all its properties were placed in the hands of a trustee, or manager. His exact position it is unnecessary to determine in this case. His business was to endeavour to liquidate so much of the firm's property as was necessary to pay off its debts, and, shortly, to try and save as much as possible out of the wreckage. His efforts were unsuccessful, and he gave up the position in 1912. In 1917, the K.P. joint family was adjudged insolvent by the District Court of Ramnad.

In the course of the tenure of his office by the trustee, a sale deed was entered into, which purported to transfer a large amount of land, the property of the K P. joint family, to one Bansilal Abirchand. Bansilal Abirchand sold some of this land to the E.N.M.K. firm and some to the M.R S.P. firm. The E.N.M.K. firm subsequently sold the land to other persons.

After the K.P. joint family had been adjudged insolvent, the firm of V.P.R.V., which was one of the creditors, moved the Official Receiver of the District Court, Ramnad, to put up to auction the interest of the K.P. joint family in the lands which were purported to be sold to Bansilal Abirchand. They were duly put up to auction, and the interest of the K.P. joint family was bought in by the V.P.R.V. firm. It is claimed that the sale in favour of Bansilal Abirchand was invalid ; so in Civil Regular Suit No. 18 of 1921, the plaintiff-appellant—the V.P.R.V. firm—sued Bansilal Abirchand, the E.N.M.K. firm and its various sub-purchasers for the return of the land sold to them by the E.N.M.K. firm.

In Civil Regular Suit No. 19 of 1921, the same firm sued Bansilal Abirchand and the M.R.S.P. Chetty firm for the return of the land sold to the latter firm

Both suits were dismissed by District Court, Pegu, and the plaintiff-appellant has filed these two appeals.

In Appeal No. 242 of 1922, he joins as respondents all the original defendants in Civil Regular Suit No. 18 of 1921, or their legal representatives, except the E.N.M.K. firm and Bansilal Abirchand.

In Appeal No. 243 of 1922, he makes only the M.R.S.P. Chetty firm the respondent.

As we have said, the plaintiff attacked the original sale of the land to Bansilal Abirchand, which purported to transfer to him many pieces of land—the property of the K.P. joint family. The lower Court dismissed both suits, holding that the sale of the land to Bansilal Abirchand was perfectly valid. This, of course, left no interest in the land with the K.P. joint amily, and, therefore, the plaintiff-appellant, in buying the interest of the K.P. joint family at the time of the sale, bought nothing at all.

When the present appeals were argued, it was pointed out that the foundation of the title of all the defendants was the sale deed from the K.P. joint family, to Bansilal Abirchand. It was pointed out that the decrees of the lower Courts declared this sale to be perfectly valid as between the plaintiff, Bansilal Abirchand and the E.N.M.K. firm. This finding had been left unappealed against by the omission of Bansilal Abirchand from the appeals ; and it was contended that this made the point *res judicata* as between the plaintiff and Bansilal Abrchand. Hence it would also be *res judicata* as between the plaintiff and the sub-purchasers from Bansilal Abirchand.

1924

V.P.R.V. CHOKALINGAM CHETTY AND ONE v. SEETHAI ACHA.

YOUNG AND BAGULEY, JJ.

The point appears to be indisputable, and the question then arose as to whether Bansilal Abirchand and the E.N.M.K. firm could be added as respondents in the present appeals.

The decrees appealed against are dated July 29th, 1922 ; so, it is perfectely clear that, ordinarily speaking, limitation has set in to prevent the plaintiff from filing any further appeals with regard to them ; but it is contended that these parties can be joined under Order XLI, Rule 20, or Order XLI, Rule 33, regardless of limitation. A person added under Order XLI, Rule 20, must be a person who is interested in the result of the appeal In the case of *Subramanian Chetty* v. *Veerabadran Chetty* (1), it has been held that, where a defendant has been exonerated by the decree of a lower appellate Court and there is no appeal against that part of the decree, he cannot be added as a party to an appeal filed against other defendants, because he cannot be said to be interested in the result of the appeal. In the body of the ruling, the learned Judges quote with approval the following dictum :—"We do not think that section 559 of the Code," (Order XLI, Rule 20), "empowers an appellate Court virtually to make an appeal for an appellant who has refrained from availing himself of his privileges under the law, by introducing for him other respondents than those he has included in his petition of appeal."

Many cases have been cited before us into which we need not go in detail ; but we may say that, with two exceptions, they are all cases similar to the illustration given in Order XLI, Rule 33, which runs as follows :—

"A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree

(1) (1908), 31 Mad., 442.

against X. X appeals and A and Y are respondents. The appellate Court decides in favour of X. It has power to pass a decree against Y."

In all the cases which have been placed before us, except two, the party added is in the position of Y, in the illustration. In one of these two cases *Amlook Chand Parrack* v. *Sarat Chunder Mukerjee* (2), the appellant had made an application against two parties and had it rejected. He filed an appeal against one party only, and the Court allowed the second respondent to be added as respondent in the appeal. This, however, is a very special case, and the judgment shows that the appellant had endeavoured to make both respondents respondents in the appeal also, but had been defeated by the Court's officers who had failed to issue the necessary process.

The other case is that of *Girish Chander Lahiri* v. *Sasi Sekhareswar Roy* (3). This is also a somewhat special case. The appellant had been proceeding against his principal opponent in many Courts up to the Privy Council and back again, and, in the course of one application, he had, it would appear, omitted to join some minor parties. He was allowed to add them in the appeal.

In the present case, however, we are of opinion that the dictum in *Subramanian Chetty* v. *Veerabadran Chetty* (1), should be followed. The adding of parties is discretionary, and we see no particular reason why we should exercise our discretion in favour of the appellant, who never asked for our assistance in this matter until he was replying to the arguments of the respondents' counsel. For some reason or other he failed to appeal against the decree which, as between him and Bansilal Abirchand, declared that the sale

(2) (1911) 38 Cal., 913. (3) (1906) 33 Cal., 329.

1924

V.P.R.V. CHOKALINGAM CHETTY AND ONE v. SEETHAI ACHA.

YOUNG AND BAGULEY, JJ.

deed in favour of Bansilal Abirchand was good. This finding, which is now beyond direct appeal, carries with it a finding that—as between him and Bansilal Abirchand's purchasers—the sale to Bansilal Abirchand is good.

This being the case, the two appeals must both fail, and they are dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Duckworth.

1924

July 18.

H. M. BOUDVILLE
v.
KING-EMPEROR.*

Bail—Grant of bail in non-bailable cases—Effect of the Amendment Act of 1923 (*XVIII of* 1923) *on section* 497, *Criminal Procedure Code* (*V of* 1898), *where offence punishable with death or transportation for life—High Court will not depart from the general rule unless under exceptional circumstances.*

Held, that the Amendment Act of 1923 tends to limit rather than to enlarge the power of Magistrates in granting bail in non-bailable cases, where the offence is punishable with death or transportation for life.

Held, further, that although a High Court is not limited within the bounds of section 497 of the Code of Criminal Procedure but has absolute discretion in the matter, it must nevertheless follow the general law as a rule and not depart from it except under very special circumstances.

G. W. Henderson v. *King-Emperor*, 6 L.B.R., 172—*followed.*

Aiyangar—for the Applicant.

Lütler— or the Crown.

DUCKWORTH, J.—This is an application for bail, pending his trial before the Sessions Court, Mandalay, on three charges under section 409, Indian Penal Code, by the applicant, H. M. Boudville.

He is an Anglo-Indian, aged 53.

---

* Criminal Miscellaneous Application No. 15 of 1924 of the High Court (sitting at Mandalay).