

APPELLATE CIVIL

Before Mr. Justice Baker.

1929
February 11.

MONJIRAM INDRACHANDRA, A FIRM, APPLICANT *v.* SHETH MANEKLAL,
MANSUKHBHAI, OPPONENT.*

Civil Procedure Code (Act V of 1908), Order XLI, rule 20, section 107—Addition of parties to appeal—Power of Appellate Court to add as parties to appeal persons not parties to suit.

The appellate Court has no power, under section 107 read with Order XLI, rule 20 of the Civil Procedure Code, to add as a respondent to the appeal a person who was not a party to the original suit and who was not interested in the result of the appeal.

Shiam Lal Joti Prasad v. Dhanpat Rai⁽¹⁾ and *Haliman v. Nur Muhammad Khan*,⁽²⁾ followed.

APPLICATION to be added as respondents in First Appeal No. 514 of 1927 from the decree of the First Class Subordinate Judge at Ahmedabad.

The facts appear sufficiently from the judgment.

H. C. Coyaji, with *Lakhia & Co.*, for the applicant.

G. N. Thakore, with *Madhavji & Co.*, for the opponent.

BAKER, J.:—The facts of this application are a little unusual. It is an application by the firm of Monjiram Indrachandra at Calcutta to be added as respondents in First Appeal No. 514 of 1927 from the decree of the First Class Subordinate Judge at Ahmedabad. The firm is not a party to the original suit. The facts are that the applicant firm Monjiram Indrachandra obtained a decree in the Calcutta High Court for a large sum against the respondent in the appeal, Nagarsheth K. Manibhai. The decree was transferred for execution to Ahmedabad, and while proceedings in execution were going on, the Court ordered certain property to be attached, but a few days prior to the attachment the respondent sold the property to the appellant, Sheth Maneklal.

* Civil Application No. 615 of 1928 in First Appeal No. 514 of 1927.

⁽¹⁾ [1925] 47 All. 853.

⁽²⁾ [1923] A. I. R. Lah. 490.

For certain reasons which I need not go into now, there was delay in registering the sale deed, and ultimately the Registrar refused to register it. Thereupon the vendee Sheth Maneklal brought Suit No. 44 of 1927 in the Court of the First Class Subordinate Judge at Ahmedabad against the vendor Nagarsheth under section 77 of the Registration Act for a decree directing the document to be registered. This suit was dismissed by the First Class Subordinate Judge. The defendant did not appear. The plaintiff appealed to this Court, First Appeal No. 514 of 1927, and the firm of Monjiram, who are creditors of the respondent, apply to be added as respondents to the appeal on the ground that the transaction between their judgment-debtors Nagarsheth and the plaintiff-appellant Maneklal is collusive and intended to prevent them from realising the amount of their decree. Under Order XXI, rule 20, of the Code of Civil Procedure the appellate Court has power to add as respondent to the appeal any person who was a party to the suit in the Court from whose decree the appeal is preferred and who has not been made a party to the appeal and is interested in the result of the appeal. It is obvious that the present applicants not having been parties to the suit in the present case, do not fulfil this condition, but the learned counsel for the applicants has referred to section 107 of the Civil Procedure Code as giving this Court jurisdiction to add his clients as parties even though they may not have been parties in the original suit. Section 107, clause (2), says:—

“ Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.”

And it is argued that under this provision the Court has power to add as a respondent in the appeal a

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person who was not a party to the original suit. He has referred to the case in *Sri Mati Hemanigini Debi v. Haridas Banerjee*⁽¹⁾ in which in a probate matter a party was added, and the Court held that both under section 107 of the Code of Civil Procedure, 1908, and under its inherent powers, an appellate Court has power to add as parties to the suit persons who were not parties in the first Court, and reference is made to *Gyanananda Asram v. Kristo Chandra Mukherji*.⁽²⁾ There is direct authority to the contrary in *Shiam Lal Joti Prasad v. Dhanpat Rai*,⁽³⁾ which lays down that under Order XLI, rule 20, of the Code of Civil Procedure the appellate Court has power to implead in the appeal a person who was a party to the suit but who has not been made a party to the appeal, but under that rule a Court has no power to implead a person who was no party to the original suit at all. That case follows *Pachkauri Raut v. Ram Khilawan Chaube*.⁽⁴⁾ There is a reference in the judgment to section 107 of the Code of Civil Procedure, but the Court held that it gives an appellate Court the same powers, generally speaking, as the trial Court. The learned counsel for the applicants has referred in his reply to *Baluswami Aiyar v. Lakshmana Aiyar*,⁽⁵⁾ in which it was held that even if Order XLI, rule 20, does not apply, Order I, rule 10, applies to appeals by force of section 107 of the Code of Civil Procedure. It is to be noticed, however, that the party so added had been a party to the original suit, but as he was a *pro forma* defendant it seems to have been argued that he was not a person interested within the meaning of Order XLI, rule 20. The view of the High Courts, therefore, appears to differ as to whether a person who was not a party to

⁽¹⁾ (1918) 3 Pat. L. J. 409.

⁽²⁾ (1925) 47 All. 853.

⁽³⁾ (1901) 8 Cal. W. N. 404.

⁽⁴⁾ (1914) 37 All. 57.

⁽⁵⁾ (1921) 44 Mad. 605 at p. 603.

the original suit can be added as a respondent in the appeal. The Lahore High Court has followed the same view as the Allahabad High Court. In *Haliman v. Nur Muhammad*,⁽¹⁾ it was held that an appellate Court has power to implead only such persons as were parties in the trial Court and were not made parties to the appeal but not those who were complete strangers to the suit. I should be disposed to hold that as section 107 of the Civil Procedure Code is expressly subject to such conditions and limitations as may be prescribed, it must be subject to Order XLI, rule 20, and therefore in order to enable a party to be added in appeal it is necessary that he should satisfy the conditions of Order XLI, rule 20, i.e., he should be a party to the suit in the Court from whose decree the appeal is preferred and should be interested in the result of the appeal. It appears to me that very great complications would arise if third parties were added in appeals, as they would necessarily, in a large number of cases, raise points of fact which have never been considered by the Court below. Assuming, however, that although the applicants do not fulfil the conditions prescribed by Order XLI, rule 20, as they were not parties to the suit, it would be open to this Court to add them in second appeal, on the merits I do not think this is a case in which they should be so added. The suit from which the appeal is preferred is merely a suit to enforce registration of a document which has been passed by the respondent to the appellant in the appeal. There is no provision under the Registration Act by which a third party can intervene, and prevent a document passed by one person to another being registered. The applicant firm is not a party to the transaction between the appellant and

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the respondent, nor can the mere fact of registration make the document operative as against the applicant firm if he succeeds in showing in a suit or otherwise that it is a collusive transaction entered into with a view to prevent him obtaining satisfaction of his decree. At the present stage we do not know anything about the merits of the case. On behalf of the appellant in this case it is contended that the sale deed was passed in consequence of an equitable mortgage which had been created by the respondent in favour of the appellant on the property attached in pursuance of the Calcutta High Court's decree, this equitable mortgage being prior to the decree obtained by the applicants in this miscellaneous application. That, however, is a question to be determined elsewhere. It has been argued by the learned counsel for the applicant that nobody is prejudiced by his being added, and that inasmuch as the respondent did not appear in the First Court, where the suit was dismissed on a point of law, he will not appear to contest the appeal, and it is possible that the decree of the lower Court may be reversed, there being no opposition by the respondent. There might be more in this argument if the appeal turned on a question of fact. It however turns on a question of law, and I am not prepared to suppose that a decision on a question of law would be upset, if it were correct, because there was no support to the judgment of the lower Court on behalf of the respondent. It is open to the applicant to bring a suit for a declaration that this sale deed cannot affect any interest in the property which he may have. At present he is only in the position of an attaching creditor, and cannot be said to have any interest in the property. And apart from this, it has been stated by the learned counsel for the applicant that there is at the present time a suit pending on the

Original Side of this High Court based on the equitable mortgage brought by the appellant in this appeal against the respondent to which the firm of the applicant is made a party, and in this suit no doubt the applicant will have the opportunity of saying again anything against the validity and genuineness of this equitable mortgage that he may have to say.

A technical point has been raised that the application has been made by a person who does not hold a power of attorney from the applicant. But I need not consider this. As a matter of fact there are two affidavits both of which apply for the addition of the firm as a respondent, but though they contain a prayer for this addition, they are really only affidavits, and the application is presented by the solicitors. But on the merits and on the law I am of opinion that this is not an application which should be granted, first because I do not think that under Order XLI, rule 20, Civil Procedure Code, which must be held to govern section 107, following the rulings of the Allahabad and Lahore High Courts, that the applicants who were not parties to the original suit, can be added as respondents. And it is also open to doubt, although I do not wish to decide that question, which is a question for argument, whether they have an interest in the result of the appeal, and on the merits I do not think that in a case of this character, which is merely a suit for compelling the registration of a certain document, it is open to third parties to come in and say that the document should not be registered.

For these reasons I discharge the rule with costs.

Rule discharged.

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