

1941

*Present : Soertsz and Wijewardene JJ.*OLAGAPPA CHETTIAR *v.* REITH.115—*D. C. Kandy, 564.*

*Action under section 247 of the Civil Procedure Code—Claim in reconvention by defendant—Rectification of deed in his favour—Joinder of distinct cause of action—Civil Procedure Code, s. 839.*

In an action under section 247 of the Civil Procedure Code brought by the judgment-creditor the defendant is not entitled to bring in, as parties defendant to the action, the vendors of the land in dispute in order to obtain a rectification of the deed on which he relies.

The Supreme Court, however, acting under section 839 of the Civil Procedure Code ordered the case to be laid by in order to give the defendant an opportunity to obtain a rectification of the deed either by negotiation with the vendors or by instituting an action against them for the purpose.

*Saibo v. Thevanayagam Pillai (24 N. L. R. 453), distinguished.*

**A** PPEAL from a judgment of the District Judge of Kandy.

*N. Nadarajah*, for the plaintiff, appellant.

*H. V. Perera, K.C.* (with him *N. K. Choksy*) for the defendant, respondent.

*Cur. adv. vult.*

March 28, 1941. SOERTSZ J.—

This is an appeal against an order made by the Additional District Judge, Kandy, allowing two parties to be added as defendants in an action instituted by the plaintiff under section 247 of the Civil Procedure Code against the present defendant to have one-fourth share of the premises called Spring Hill estate described in the schedule to the plaint declared executable as the property of one Manuel Costa, judgment-debtor, against whom the plaintiff had obtained writ.

The defendant's case is that the interest of Manuel Costa in the land passed to one Ponniah Peiris and to one Stanislaus Costa and that they purported to sell this interest of Manuel Costa and all other interests in this land as well as in another land to him, but that by an error on the part of all concerned the land in question in this case was not included in the deed of transfer to him. He avers that from the date of the transfer he has been in possession of this land and that the error was discovered only after the institution of this case. He therefore asked that he be permitted to bring in the vendors as parties defendants in order that he might obtain a rectification of his deed from them and confront the plaintiffs with it.

In the answer filed by the defendant, he claimed a prescriptive title to the entire land by virtue of his and his vendor's possession and he also contended that if the deed in his favour "did not operate to transfer the legal title of his vendors their beneficial interests were actually transferred". On those averments it was open to the defendant to ask for an adjudication between himself and the plaintiff on the pleas raised therein without any other parties being brought into the case. But the defendant was not content to proceed to trial on that basis. He put forward the alternative claim that in the circumstances mentioned in his answer he is entitled to a deed of rectification from his vendors. It is in view of this claim that the defendant asked that his vendors be added as



defendants. But the cause of action involved in this claim lies not against the plaintiff but against third parties and on a proper view of the matter the defendant's motion is no less than an attempt to roll a case of his own against his vendors with the plaintiff's case against him. I should require very clear authority before I allow that to be done. The course the defendant seeks to take is, in my opinion, obnoxious to section 17 of the Civil Procedure Code which says that nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action. In this case if the motion of the defendant is allowed he in reality, becomes the plaintiff in a distinct cause of action against the new parties and the resulting position is the same as if two plaintiffs have joined in respect of distinct causes of action, and what is more against two different defendants. The words in section 18 of the Code "The Court may order . . . that the name of any person . . . whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the action be added" are no doubt very wide, but they must be interpreted in relation to and subject to the provisions of section 14 and 18 of the Code.

The case of *Messrs. Saibo v. Thevanayagam Pillai*<sup>1</sup> is distinguishable. In that case the defendant's claim for rectification was really against the plaintiff because the rectification of the plaintiff's deed was involved in the rectification he sought of his own, and the party proposed to be added was necessary for the rectification of the two deeds, for he was the vendor both to the plaintiff and to the defendant. Whereas in the present case the plaintiff has no kind of connection or concern with the parties sought to be added.

For these reasons I am of opinion that the order of the trial Judge was wrong and that it should be set aside. But the facts disclosed in the defendant's answer are such as to make it necessary for the ends of justice that the defendant should have an opportunity to obtain a rectification of his deed either by negotiation with his vendors or by instituting an action against them for the purpose. I would, in the circumstances, act under section 839 of the Civil Procedure Code and direct that this case be laid by for the period of three months calculated from the date of the record being received in the Court below. It will be open to the defendant at the end of three months to ask for an extension of time from the trial Judge. The Judge will no doubt grant that application and any further applications if he is satisfied that the defendant is acting *bona fide* and as expeditiously as possible to obtain a rectification of his deed. If he is not so satisfied he will direct the action to proceed as at present constituted. We have no doubt that the Judge will see that this case is not unduly retarded. I would, therefore, set aside the order made by the learned District Judge and remit the case to him for the purpose indicated above.

The appellant is entitled to the costs of this appeal and of the inquiry in the Court below.

WIJEYWARDENE J.—I agree.

*Appeal allowed.*

<sup>1</sup> 24 N. L. R. 453.