

Sivagurunatha Chettiar and Another Vs Ramasami Aiyangar

Court: Madras High Court

Date of Decision: Oct. 20, 1911

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 30

Citation: (1913) 25 MLJ 630

Judgement

1. This petition raised the question whether, when the sole plaintiff in a representative suit instituted with permission obtained under Rule 8, Order I,

dies before there has been any adjudication, the suit can be revived or continued by one of the persons having the same interest in the suit. The

question is not directly covered by any precedent and is one, by no means, easy to decide.

2. The suit in which the order impugned by this petition has been made was instituted with sanction obtained under Rule 8 Order 1 by one

Sreenivasa Chariar, a voter in the Kumbakonam Devasthanam circle, seeking a declaration that the election of the 7th defendant as a member of

the Devasthanam committee is void and for an injunction to restrain him from exercising the office of such member. Sreenivasa Chariar died before

the date on which the case was posted for examination of witnesses and, on the application of the Respondent, and the voter in the Devasthanam,

who wanted to proceed with the suit, it has been revived, and the Respondent's name has been ordered to be entered in the cause title as the legal

representative of the deceased Sreenivasa Chariar. The Respondent claimed that in law he was the representative of Sreenivasa Chariar in as much

as he was one of the voters on whose behalf Sreenivasa Chariar instituted the suit. It seems to me clear beyond dispute that the respondent does

not come within the definition of legal representative as given in Clause (11) of Section 2, and it has not been contended before me that he does.

He cannot in any way be said to represent the estate of the deceased; in fact he has no concern with such estate. But if he is entitled to continue the

suit, mere misdescription of the respondent in the order of the Subordinate Judge as legal representative of the deceased plaintiff would not in itself

justify me in setting aside the order. The misdescription may be rectified if necessary.

3. The substantial question therefore is, whether the suit can be continued by the respondent. There can be no doubt that the right of the deceased

plaintiff to sue in this case was personal to himself and so far as that right is concerned, it must be held to have come to an end on his death. Mr. S.

Sreenivasa Aiyangar contends that with the cessation of the deceased plaintiff's right to sue the suit itself ceased to exist or became dead, while the

learned pleader for the respondent contends that the action being a representative one, the other persons having the same interest, whom the

deceased was allowed to represent, must be held for the purposes of continuing the action to be his co-plaintiffs. Before proceeding further I may

mention that Mr. Sreenivasa Aiyangar also contended that the sanction granted to the deceased plaintiff under Order I Rule 8 is itself bad in as

much as the right of each voter is personal to himself. But as pointed out by Shephard J. in *Sreenivasa Chariar v. Rughavachariar* (1897) I. L. K.

23 M. 28 in reference to the corresponding provisions of the CPC of 1882 and the language of Rule 8 Order I is identical in this respect with the

language of Section 30 of the code of 1882, this rule of procedure, which is founded on a rule of the English Court of Chancery, applies not only

to cases where the interests are concurrent but also where they are similar though distinct. Besides, the defendants never objected to the order

granting sanction under Rule 8. I will therefore deal with the present question on the basis of the sanction having been validly granted. I shall first

examine the provisions of the code. It cannot be said that either Rule 2 or Rule 3, Order XXII, in terms applies to this case; not Rule 2 for the

simple reason that it contemplates cases where there are actually more than one plaintiff or defendant on the record, and not Rule 3 for the same

reason as far as the first part of Sub-rule 1 is concerned, and so far as its second part is concerned, it could not apply as it deals with cases in

which a sole plaintiff's right to sue survives to his legal representative and here the right of the deceased to sue, in so far as it was for his own

benefit would not survive at all. Sub-rule (2) apparently deals with cases where an application could be made under Sub Rule (1) and has not been

made, though that is not expressed but if the direction that the suit shall abate was to be taken to apply to cases other than those contemplated by

Sub-rule (1) the result would be that the suit would abate so far as the deceased plaintiff is concerned. But as I have said the legislature does not

purport by these sections to deal with the revivor, or more strictly speaking the continuance of a representative suit instituted by a sole plaintiff.

4. Now let us see what light is thrown on the question by Rule 8. Order. I. and the other provisions of the Code. The effect of the permission

granted under Rule 8 is to make the suit as one "on behalf of and for the benefit of" the deceased and other voters in the Devasthanam including

the respondent. All the voters are to be given notice of the institution of the suit and any of them might apply to be made a party to such suit and

would subject perhaps to the discretion of the court, be entitled to join.

5. Sub-rule 2 does not impose any limit or condition as to the time within which the application must be made, but it is contended by Mr. S.

Sreenivasa Aiyangar that one necessarily implied condition is that the suit must still be in existence at the date of the death of the plaintiff. He says

that, when Srinneevasa Chariar died, the suit died with him, and therefore there would be nothing to revive or continue. No doubt that would be the

result, if the suit was instituted solely in his own right and not under the provisions of Rule 8. The contention however is that the sanction obtained

under that rule does not in any way affect the personal character of the action so far as its prosecution by the plaintiff up to adjudication is

concerned, though after adjudication other members of the class will be bound by and entitled to the benefit of the decree, as provided by Section

11 Explanation VI of the code. It is only after adjudication that the other interested persons not parties to the suit would be treated as claiming

under the person litigating and allowed, when necessary, to take part in the proceedings so that if the plaintiff dies after decree any of the other

persons on whose behalf the suit was brought can carry on the proceedings. But until adjudication the plaintiff is dominus litis and not a trustee of

the action, and therefore on his death the action, if his right to sue does not survive as in this case must necessarily cease to exist. This in substance

is the argument of Mr. Sreenivasa Aiyangar, and in support of it he relies on a number of English rulings.

6. The provisions of the code regarding suits of a representative character are apparently as I have said founded on the rules of Chancery practice

in England, and as there is no clear and express provision in the code relating to the particular question, I may appropriately refer to the English

decisions to ascertain the principle which should govern this case. It stands to reason that, so far as the continuing or not continuing the suit is

concerned, the plaintiff should have entire control of an action of this nature; he has no doubt obtained permission to prosecute the suit in behalf of

the others, but has not bound himself to do so. In that sense he is undoubtedly dominus litis and not a trustee of the action. He may therefore

withdraw from the suit or compromise it with the defendants, and it cannot be open to other persons to prevent him from doing so and to compel

him to devote his time and money in prosecuting the suit for their benefit. This is what is laid down in *Handford v. Storie* and *Ward v. Alpha Company*

: In *Re Alpha Company* (1825) 57 Eng. Rep. 320 and *Wolf v. Can Bollen* (1906) 94 L. T. 502. But it does not follow because the plaintiff on the

record can withdraw from the suit or compromise it for his own benefit, that other members of the class have no interest in the suit. In fact they

have a most vital interest as the adjudication will bind them equally with the plaintiff, and I see no reason why that interest should not be considered

still subsisting after the death of the plaintiff to enable them to pursue the action. It is conceded that the suit may be continued when the "plaintiff

dies after the decree, but why should it make any difference that he died before the decree ? It is argued that after decree the plaintiff becomes a

trustee of the action. But this is not so, though he would be a trustee of the fruits of the decree in his hands. At least in actions other than those

involving administration of the estate of a debtor on behalf of all the creditors i. e. creditor actions, it cannot be said that the plaintiff who has

obtained decree in a representative suit is bound to go on with it. It is observed by Kekewich J. in *Ward v. Alpha Company* (1903) 1 Ch. 203

which was an action by a debenture holder on behalf of himself and other debenture holders, "" he can't prevent another debenture holder coming

in and claiming benefit of the decree but he is not bound to go on because some other person may be entitled to the benefit of the action."" He then

points out that the reason why a second suit with the same object would be stopped after the first suit has been commenced is to prevent improper

costs, and it seems to me clear that in this country, the legislature having permitted the other members of the class represented by the plaintiff to

apply to be made parties in the plaintiff's suit, it would be the duty of the Court to restrain a second independent suit.

7. As I have pointed out the Legislature in Sub-rule (2) Rule 8 Order. I does not for obvious reasons impose any limit of time within which

applications must be made to be made parties, as it may be necessary for the prosecution of their interests that other persons interested should be

allowed to intervene at any stage of the suit.

8. See also *Watson v. Cane*¹. And it does not stand to reason why if any member of the class is competent by a future application to come in as a

plaintiff or defendant in order to safeguard his interest or to get rid of the effects of improper conduct of the suit by the plaintiff, he should not be

allowed to do so in a case where the plaintiff is dead and his legal representative is not competent to maintain the suit. Why should all the

proceedings already taken be treated as wasted, when the very policy of representative actions is to prevent a multiplicity of actions ? On the other

hand the Court is vested with discretion as to whether it should or should not grant an application under Sub-rule (2) of Rule 8 in the circumstances

of a particular case.

9. In this case, the action in my opinion being continued, there can be no doubt that the respondent has been rightly allowed to continue it.

10. This petition must be dismissed with costs.