

**(2000) 02 CAL CK 0002**

**Calcutta High Court**

**Case No:** Second Appeal No. 61 of 1991

Headmaster, Loulara Radha  
Charan Academy

APPELLANT

Vs

Harihar Mukherjee

RESPONDENT

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**Date of Decision:** Feb. 17, 2000

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11, 100
- Specific Relief Act, 1963 - Section 34
- West Bengal Board of Secondary Education Act, 1963 - Section 19(A)

**Citation:** 105 CWN 68 : (2000) 1 ILR (Cal) 343

**Hon'ble Judges:** Bhaskar Bhattacharya, J

**Bench:** Single Bench

**Advocate:** Amal Baran Chatterjee and Anadi Banerjee, for the Appellant; Moni Bhusan Sarkar and Sunity Sengupta, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Bhaskar Bhattacharya, J.

This second appeal is at the instance of a Defendant in a suit for declaration and injunction, and is directed against the judgment and decree dated September 29, 1986, passed by the learned Assistant District Judge, Purulia in Title Appeal No. 55 of 1985 thereby affirming those dated May 3, 1985, passed by the learned Munsif, Purulia in Title Suit No. 277 of 1980.

2. The Respondent No. 1 herein filed the aforesaid Title Suit No. 277 of 1980 for declaration that he is the founder of Loulara Radha Charan Academy and was entitled to have his name entered in the category of founder in the voters" list for the purpose of reconstitution of Managing Committee of the said school and for permanent injunction restraining the Appellant from holding election scheduled to be held on October 12, 1980, on the basis of voters" list finally prepared and

published on September 27, 1980 and from proceeding with reconstitution of the Managing Committee of the school on the basis thereof.

3. The said suit was contested by the present Appellant by filing written statement thereby opposing the prayer of the Respondent No. 1 and one of the defences taken by the Appellant was that the suit was not maintainable in the absence of West Bengal Board of Secondary Education, Director of the Secondary Education and District Inspector of Schools (Secondary Education), Purulia.

4. The learned trial Judge on contested hearing decreed the aforesaid suit thereby declaring that the Plaintiff is a founder of the said school and was entitled to have his name entered in the category of founder in the voters' list for the purpose of reconstitution of the Managing Committee of the School. The Appellant was further restrained from preparing voters' list without the name of the voter of founder category for the reconstitution of the Managing Committee in respect of the said school.

5. Being dissatisfied, the present Appellant preferred an appeal and as mentioned earlier, by the judgment and decree impugned herein the learned first appellate court below has dismissed such appeal thereby affirming the judgment and decree passed by the learned trial Judge.

6. Being dissatisfied, the Defendant has preferred the instant second appeal.

7. At the time of admission of the instant second appeal, the Division Bench admitting such appeal under the provision of Order 41 Rule 11 of the CPC admitted the same only on the question whether the suit was maintainable.

8. At the time of hearing of this appeal, Mr. Chatterjee, the Learned Counsel appearing on behalf of the Appellant has clarified that question by submitting that the suit was not maintainable in the absence of Board of Secondary Education, Director of Secondary Education, and the District Inspector of School (Secondary Education), Purulia as parties.

9. After hearing the Learned Counsels for the parties, I thus reformulated the substantial question of law required u/s 100 of the CPC in the following manner:

whether the learned courts below erred in law in passing a decree in the absence of West Bengal Board of Secondary Education, Director of Secondary Education and the District Inspector of Schools (Secondary Education), Purulia as parties?

10. Mr Chatterjee in support of the aforesaid contention has relied upon the amended Rule 5(1)(b) of the Management Rules which runs as follows:

(b) The term "founder" means a person who has been recognised as such by the First Committee of the Institution constituted according to the rules after recognition by the appropriate authority and his/her name has occurred as a founder in the Voters' list for constitution and for successive reconstitution, if any,

of the Committee since its inception and on the death of founder, his/her son or other heir shall not be entitled to be treated as a founder unless his/her right to be so treated has been recognised in any registered deed executed by the founder and accepted by the First Committee as aforesaid and approved by the University of Calcutta or the West Bengal Board of Secondary Education. In case of any dispute, the matter shall be referred to (the Executive Committee) whose decision thereon shall be final.

11. By relying upon the aforesaid provision, Mr. Chatterjee contends that in view of the fact that in case of any dispute the matter should be referred to the Executive Committee whose decision thereon shall be final, the present suit is not maintainable in the absence of Executive Committee.

12. Mr. Chatterjee in this connection relies upon Section 19(A) of the West Bengal Board of Secondary Education Act, 1963, which defines Executive Committee.

13. Relying upon the aforesaid provision Mr. Chatterjee contends that in the absence of West Bengal Board of Secondary Education, Director of Secondary Education and the District Inspector of Schools (Secondary Education), Purulia, no effective decree for declaration and injunction could be passed and as such on the ground alone, the suit is liable to be dismissed.

14. Mr. Sarkar, the learned senior counsel appearing on behalf of the Plaintiff/Respondent No. 1 has however opposed the aforesaid contention of Mr. Chatterjee and has contended that at the time of institution of suit, the aforesaid amended provision of Clause 5(1)(b) of the rule was not there and as such by virtue of the aforesaid amended provision the Appellant cannot contend that those persons should be made parties. Mr. Sarkar submits that the amendment cannot take away the right of his client which existed at the time of institution of the suit. In support of such contention, Mr. Sarkar has relied upon two decisions, one in the case of [Sadar Ali and Others Vs. Doliluddin Ostagar](#), and the other in the case of [Makar Ali Vs. Sarfaddin and Others](#),

15. In the case of Sadar Ali Supra the question before Full Bench was whether the date of presentation of the second appeal to the High Court will be decisive factor which will determine the applicability of the amended Clause 15 of the Letters Patent requiring permission of the deciding Judge for further appeal. On the aforesaid question, the Full Bench answered by saying that date of institution of the suit is the determining factor not the date of presentation of the second appeal.

16. In my opinion, the aforesaid principle has no application to the fact of the present case in view of the fact the question before this Court is whether on the date of passing of decree the court could pass any effective decree in the absence of those parties whose decisions are final on the question in dispute. One of the settled principles of law required to be considered by a court while deciding a suit u/s 34 of the Specific Relief Act is that the court will not pass any declaratory decree which will

not be binding upon the appropriate authority or which will be useless. On the question whether a person is a founder member or not, the decision of the Executive Committee of the Board is final. In the absence of Board, in my opinion, the learned trial court could not pass any effective decree. Therefore, although the amendment come during the pendency of the suit, the trial court could not pass any effective decree unless the persons whose decision is final in this regard are bound by such decree. Thus, the said decision cannot have any application to the fact of the present case.

17. In the other decision viz. Makar Ali v. Sarfaddin and Ors. Supra a Division Bench of this Court reiterated the well settled principles of law that a repelling enactment cannot be given retrospective operation so as to impose an impossible condition on pain of forfeiture of a vested right. In my opinion, the said decision is equally inapplicable to the fact of the present case. In the instant case, by amendment during pendency of the suit it has been incorporated that in case of any dispute as regards status of a person as founder member of a school, the decision of the Executive Committee of the Board shall be final. The aforesaid decision, in my opinion, cannot be construed to mean that the legislature has no right to incorporate any provision giving a right to Executive Committee of the Board to decide any dispute as to whether a person is of founder member of an existing school. Therefore, in order to pass an effective declaration, the court must hear the Executive Committee of the Board so that the decision of the court may be binding upon such Executive Committee.

18. Therefore, the aforesaid two decisions relied upon by Mr. Sarkar are of no assistance to his client.

19. I, therefore, find substance in the contention of the Appellant that in the absence of Board, the suit is not maintainable. Although such point was specifically taken in the written statement and a specific issue was framed to that effect and the Plaintiff having decided not to add those persons in the suit inspite of such objection, no question of remanding the matter back to the learned trial Judge arises. Thus, without entering, into the merit I allow this appeal simply on the ground that the suit was not maintainable in the absence of necessary parties and the judgment and decree passed by the courts below are thus liable to be set aside. Appeal is thus allowed.

20. No costs.