RAZIA BEGUM

v.

SAHEBZADI ANWAR BEGUM & OTHERS

1958

May 23.

(B. P. SINHA, JAFER IMAM and J. L. KAPUR JJ.)

Civil Procedure—Addition of parties—Declaratory suit—Claim of status as married wife—Admission by husband—Right of wife and son denying plaintiff's claim, to be added as parties—Mohammedan law—Code of Civil Procedure (Act V of 1908), O. 1, r. 10(2)—Specific Relief Act (I of 1877), ss. 42, 43.

The appellant instituted a suit against the third respondent, inter alia, for a declaration that she was his lawfully married wife, alleging that though the fact of her marriage was known to all who knew him, he was trying to suppress the facts in such a way that the members of his family should conclude that she was not his *Nikah* wife, that he refused to openly acknowledge her as his legally wedded wife and that this conduct on his part had cast a cloud on her status as such wife and was affecting the rights of the issue of the marriage, her three daughters. The third respondent filed his written statement admitting the claim, but on the same date respondents 1 and 2 made an application under O. 1, r. 10(2), of the Code of Civil Procedure for being impleaded in the suit as defendants on the grounds that they were respectively the wife and son of the third respondent, that they were interested in denying the appellant's status as wife and the status of her children as the legitimate children of the third respondent, that the suit was the result of a collusion between the appellant and the third respondent and that if the appellant was declared to be lawfully wedded to the third respondent, the rights and interests of respondents 1 and 2 in the estate of the third respondent would be affected. The application was contested by both the appellant and the third respondent. The trial court allowed the application and the order was confirmed by the High Court in its revisional jurisdiction. The question was whether the lower courts did not exceed their powers in directing the addition of respondents 1 and 2 as parties-defendants in the action :

Held (*per* Sinha and Kapur JJ., Imam J., *dissenting*), that in view of the averments in the plaint which showed that not only the third respondent but the other members of his family, including respondents 1 and 2, were interested in denying the appellant's status as a legally wedded wife, respondents 1 and 2 were proper parties to the suit.

The question of addition of parties under O. 1, r. 10, of the Code of Civil Procedure is generally not one of initial jurisdiction of the court, but of a judicial discretion; in a suit for a declaration as regards status or a legal character under s. 42 of

1958

Razia Begum
v.
Anwar Begum

the Specific Relief Act, the rule that in order that a person may be added as a party he must have a present or direct interest in the subject-matter of the suit, is not wholly applicable, and the rule may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy. In such suits the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon clear proof, apart from the admission.

A declaratory judgment in respect of a disputed status will be binding not only upon the parties actually before the court but also upon persons claiming through them respectively, within the meaning of s. 43 of the Specific Relief Act. The word "respectively" in the section has been used with a view to showing that the parties arrayed on either side, are really claiming adversely to one another, so far as the declaration is concerned.

Per Imam J.—The facts of the present case do not justify the addition of respondents 1 and 2 as defendants under the provisions of O. 1, r. 10(2), of the Code of Civil Procedure, because :—

(1) There is nothing in the pleadings to suggest that respondents 1 and 2 were denying the appellant's status as wife of the third respondent, and the court ought not to compel the plaintiff to add parties to the suit where on the face of the pleadings plaintiff has no cause of action against them.

(2) Under the Mohammedan law a man is entitled to have four wives at one and the same time and, consequently, as the third respondent has admitted that the appellant was married to him, respondents 1 and 2 have no *locus standi* to make any representation in the suit that there was collusion between the appellant and the third respondent.

(3) During the lifetime of the third respondent neither the appellant nor her children on the one hand nor respondents 1 and 2 on the other have any rights in his estate, under the Mohammedan law.

(4) Assuming that a declaration in the suit would be binding upon respondents 1 and 2, which is doubtful having regard to the terms of s. 43 of the Specific Relief Act, that would be no justification for their being impleaded in the suit where the issue is not one of inheritance but one of marriage between the appellant and the third respondent.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 695 of 1957.

Appeal by special leave from the judgment and order dated September 17, 1957, of the Andhra

Pradesh High Court in Civil Revision Petition No. 1112 of 1957 arising out of the order dated July 6, 1957, of the Court of the Second Additional Judge, City Civil Court, Hyderabad (Deccan), made on the application under O. 1, r. 10, C. P. C. in Original Suit No. 43/1 of 1957.

M. C. Setalvad, Attorney-General for India, C. K. Daphtary, Solicitor-General of India, H. N. Sanyal, Additional Solicitor-General of India, N. C. Chatterjee, Syed Mohasim, Akbar Ali Mosavi, H. J. Umrigar, O. N. Srivastava, J. B. Dadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the appellant.

Purshottam Tricumdas, Anwarull Pusha and *G. Gopalakrishnan*, for respondent No. 1.

Sir Sultan Ahmed, A. Ramaswami Iyengar, C. Chakravarthy, S. Ranganathan and *G. Gopalakrishnan*, for respondent No. 2.

G. S. Pathak, A. V. Viswanatha Sastri, Mohd. Yunus Saleem, Ghulam Ahmed Khan, Choudhary Akhtar Hussain, Shaukat Hussain and *Sardar Bahadur*, for respondent No. 3.

1958. May 23. The judgment of B. P. Sinha and J. L. Kapur JJ. was delivered by Sinha J. Jafer Imam J. delivered a separate judgment.

Sinha J.

SINHA J.—This appeal by special leave is directed against the concurring judgments and orders of the courts below, allowing the intervention of respondents 1 and 2 and adding them as defendants 2 and 3 in the suit instituted by the appellant against her alleged husband, now respondent 3, who was the sole defendant in the suit as originally framed. The main question in controversy in this appeal is the true construction of sub-r. (2) of r. 10 of O. 1 of the Code of Civil Procedure, and its application to the facts of this case which are given below :—

On April 12, 1957, the plaintiff—appellant in this Court—instituted the suit out of which this appeal arises against the third respondent who is the second son of His Exalted Highness the Nizam of Hyderabad, and who will, hereinafter, be referred to as the Prince.

1958

Razia Begum
v.
Anwar Begum

Sinha J.

In the plaint she alleged that she is the lawfully married wife of the Prince, the marriage ceremony (*Nikah*) having been solemnized in accordance with the Shia Law by a Shia Mujtahid on October 19, 1948. The plaintiff also averred that the issue of the marriage were three daughters aged 8, 7 and 5 years; that the fact of the marriage was known to all persons acquainted with the Prince; that there was a pre-nuptial agreement, whereby the Prince agreed to pay Rs. 2,000 per month to the plaintiff as *Kharch-e-pandan*; that the Prince stopped the payment of the allowance aforesaid of Rs. 2,000 per month, since January, 1953, without any reasons and in contravention of the said agreement. On these allegations, she asked for the following two declarations:—

"(1) That the plaintiff be declared to be the legally-wedded wife (*Mankuha*) of the defendant,

(2) That a decree be passed in favour of this plaintiff against the defendant declaring her to be entitled to receive from the defendant I. G. Rs. 2,000 per month as *Kharch-e-pandan*."

It may be noted that she did not make any claim for arrears of the allowance aforesaid since the date the Prince is alleged to have stopped payment of the same. Only ten days later, on April 22, 1957, the Prince filed his written statement, admitting the entire claim of the plaintiff for the two declarations aforesaid. On that very date, an application under O. 1, r. 10, of the Code of Civil Procedure, on behalf of (1) Sahebzadi Anwar Begum, and (2) Prince Shahamat Ali Khan, minor, under the guardianship of his mother, the said Sahebzadi, was made. They are respondents 1 and 2 respectively in this Court. The Sahebzadi, respondent 1, claimed to be the "lawful and legally wedded wife" of the Prince, and respondent 2, the son of the Prince by the first respondent. In their petition they stated *inter alia*: "The plaintiff herself has stated in the plaint that the defendant is trying to suppress the facts of his marriage with the plaintiff so that the members of his family should conclude that the plaintiff is not his *Nikah* wife, and the defendant is interested in denying the rights and status of the plaintiff,

The petitioners on being joined as parties to the suit will be equally interested in denying the marriage of the plaintiff and her rights and status.....The petitioners have reasons to believe that the above suit is a result of collusion. The object and motive of the plaintiff in instituting the above suit is to adversely affect the relationship of the petitioners and the defendant and also to deprive the rights and interests of the petitioners in the defendant's estate." On June 15, 1957, the plaintiff made an answer to the petition for intervention, filed by respondents 1 and 2 aforesaid. She denied the right of the interveners to be impleaded in that suit, and asserted that the " possibility of the rights of the petitioners being infringed are very remote, contingent upon their or plaintiff surviving the defendant or other circumstances which may or may not arise." She also founded her objection on the ground that, having regard to the admission of the defendant in his written statement, " there is no serious controversy in the suit." She also added a number of legal objections which need not be specifically noticed as they have not been pressed in this Court. She further asserted that the petitioners (meaning thereby, respondents 1 and 2) are neither necessary nor proper parties to the suit. She anticipated the ground most hotly contested in this Court, by asserting that the " judgment of this Hon'ble Court in this suit will not be conclusive as against petitioners as they allege collusion and they will not be prejudiced by not being made parties." She ends her statement by making the following significant allegation:—

" The alleged collusion and motive attributed to the plaintiff for instituting this suit are denied. On the other hand, the application to be added as defendants is *mala fide* and malicious and is evidently inspired by some strong force behind them interested in harassing the plaintiff and exposing her to the risk of a vexatious and protracted litigation."

The Prince, in his own answer to the application for intervention, stated that he admitted that the first

1958

Razia Begum v. Anwar Begum

Sinha J.

respondent is his wife and that the second respondent is his son, and repeated his admission by saying that he married the plaintiff in October, 1948, and the first respondent in December, 1952. He added further that when he married the first respondent, he had already three daughters by the plaintiff, which fact was known to the first respondent at the time of her marriage with him. He supported the plaintiff in her objection to the intervention by asserting that the rights of respondents 1 and 2 will not be affected in any way, and by insisting upon his Muslim right of having four wives living at the same time. He also supported the plaintiff in her denial of the allegation of collusion and "that the suit is intended to adversely affect the relationship of the petitioners and the defendant-respondent and to deprive the rights and interests of the petitioners in the defendant-respondent's estate." He, in his turn, added the following equally significant penultimate para :—

"That the petitioners' application has been filed in order to prolong the litigation and that the defendant-respondent's father His Exalted Highness the Nizam, appears to be more interested than petitioner No. 1 herself, in creating unnecessary complications in the suit."

On these allegations and counter allegations, after hearing the parties, the trial court, by its judgment and order dated July 6, 1957, allowed the application for intervention, and directed respondents 1 and 2 to be added as defendants. The court, after discussing all the contentions raised on behalf of the parties, observed that there were indications in the record of a possible collusion between the plaintiff and the defendant; that the relief claimed under s. 42 of the Specific Relief Act, being discretionary, could not be granted as of right; that the presence of the interveners would help the court in unravelling the mysteries of the litigation, and that there was force in the contention put forward on behalf of the interveners that under s. 43 of the Specific Relief Act, any declaration given in favour of the plaintiff will be binding upon the interveners. It also held that in order effectually and completely to

adjudicate upon and settle the present controversy, the presence of the interveners was necessary.

The plaintiff moved the High Court of Judicature of Andhra Pradesh, at Hyderabad, under s. 115 of the Code of Civil Procedure, to revise the aforesaid order of the learned trial judge. The High Court, in a well-considered judgment, after discussing the points raised for and against the addition of the parties, and noticing almost all the authorities quoted before us, refused to interfere with the discretion exercised by the trial court, and dismissed the revisional application. It came to the conclusion that the first respondent, the admitted wife of the defendant, and the second respondent, the admitted son by her, are interested in denying the status claimed by the plaintiff, and " have some rights against the estate of the 3rd respondent. " The learned Judge of the High Court further observed : " When so much sanctity is attached to the status of marriage, it would indeed be strange that persons who are so intimately related to the 3rd respondent as wife and son, should be denied the opportunity of contesting the status of the petitioner as his lawfully married wife.....It cannot be that the petitioner is seeking any empty relief carrying with it the stamp of futility and it is difficult to assume that she is fighting a vain or purposeless litigation. If what she is seeking is a relief which will carry with it certain legal incidents, are not persons interested in denying her status proper parties to the litigation ? " The Court also observed that it was with a view to avoiding multiplicity of suits that r. 10(2) of O. 1, had made provision for adding parties. The Court noticed the argument under s. 43 of the Specific Relief Act, but did not express any final opinion, because, in its view, it had already reached the " conclusion that the proposed parties are persons whose presence before the court is necessary within the meaning of O. 1, r. 10 (2), so as to ensure that the dispute should be finally determined once for all in the presence of all the parties interested."

Against the judgment of the High Court, refusing to set aside the order passed by the learned trial judge,

1958

Razia Begum
v.
Anwar Begum

Sinha J.

the plaintiff moved this Court and obtained special leave to appeal.

In the forefront of his arguments in support of the appeal, the learned Attorney-General submitted that the court had no jurisdiction to add the first two respondents as defendants in the suit. He relied upon the words of the relevant portion of sub-rule (2) of r. 10 of O. 1 of the Code, which are as follows :—

"(2).....and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

He rightly pointed out, and there was no controversy between the parties before us, that the added defendants do not come within the purview of the words "who ought to have been joined", which apparently have reference to necessary parties in the sense that the suit cannot be effectively disposed of without their presence on the record. The learned Attorney-General strenuously argued that it cannot be asserted in this case that the presence of the added defendants—respondents 1 and 2—before the court was necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit. He founded this argument on the legal position that the wife and the son of the Prince—respondents 1 and 2—have no present interest in his estate. Their expectancy of succession to the estate of the Prince does not clothe them with any right vested or contingent to intervene in this action. In this connection, he pointed out that r. 10 of O. 1 of the Code of Civil Procedure, which corresponds to portions of O. 16, r. 11, of the Rules of the Supreme Court in England, has been the subject-matter of judicial interpretation in many cases. Both, in this country and in England, there have been two currents of judicial opinion, one taking what may be called the narrower view, and the other, the wider view. As illustrations of the former, that is to say, the narrower

view, may be cited the cases of *Moser* v. *Marsden* (1) and *McCheane* v. *Gyles* (*No. 2*) (2). In India, this view is represented by the decision in the case of *Sri Mahant Prayaga Doss Jee Varyu* v. *The Board of Commissioners for Hindu Religious Endowments, Madras* (3). On the other side of the line, representing the wider view, may be cited the case of *Dollfus Mieg Et Compagnie S. A.* v. *Bank of England* (4). In India, the decisions of the Madras High Court, in the cases of *Vydianadayyan* v. *Sitaramayyan* (5) and *Secy. of State* v. *M. Murugesa Mudaliar* (6), were cited as illustrations. But it was contended on behalf of the appellants that whether the narrower or the wider view of the interpretation of sub-r. (2) of r. 10 of O. 1 of the Code of Civil Procedure is taken, the result, so far as the present controversy is concerned, would be the same. In the leading case of *Moser* v. *Marsden* (1), Lindley L. J. has held that a party who is not directly interested in the issues between the plaintiff and the defendant, but is only indirectly or commercially affected, cannot be added as a defendant because the court has no jurisdiction, under the relevant rule, to bring him on the record even as a "proper party". That was a suit to restrain the alleged infringement of the plaintiff's patent by the defendant, Marsden. The Court held, reversing the order of the trial judge, that the party sought to be added had no direct interest in the subject-matter of the litigation, and all that could have been said on behalf of the party intervening was that the judgment against the defendant would affect his interest commercially. The Court distinguished the previous decisions in *Vavasseur* v. *Krupp* (7) and *Apollinaris Company* v. *Wilson* (8), on the ground that in those cases the litigation would have affected the property of the persons not before the court. This leading case of *Moser* v. *Marsden* (1) is clearly an authority for the proposition that the court has jurisdiction to add as a party defendant only a person

(1) [1892] 1 Ch. 487.
(2) [1902] 1 Ch. 91 f.
(3) (1926) I. L. R. 50 Mad. 34.
(4) [1950] 2 All E. R. 605.
(5) (1881) I. L. R. 5 Mad. 52.
(6) A. I. R. 1929 Mad. 443.
(7) (1878) 9 Ch. D. 351.
(8) (1886) 31 Ch. D. 632.

1958

Razia Begum
v.
Anwar Begum

Sinha J.

who is directly interested in the subject-matter of the litigation and not a person who will be only indirectly or commercially affected. Kay L. J. who agreed with Lindley L. J. in that case, observed that the relevant rule of the Supreme Court, on its proper construction, authorized the court to add only such persons as would be bound by the judgment to be given in the action, but did not authorize the court to add any persons who would not be so bound and whose interest may only indirectly be affected in a commercial sense. To the same effect is the decision in *Re I. G. Farbenindustrie A. G. Agreement* (1). The Court held that in order that a party may be added as a defendant in the suit, he should have a legal interest in the subject-matter of the litigation—legal interest not as distinguished from an equitable interest, but an interest which the law recognizes. Lord Greene M. R. giving the judgment of the Court, also observed that the court had no jurisdiction to add a person as a party to the litigation if he had no legal interest in the issue involved in the case. In the case of *Vydiana-dayyan* v. *Sitaramayyan* (2), in which the wider view of the interpretation of the relevant rule was taken, Turner C. J. delivering the judgment of the Court, observed that the wider interpretation which enabled the court to avoid conflicting decisions on the same question and which would finally and effectually put an end to the litigation respecting it, should be adopted. But in that case also the party added as defendant was interested in the subject-matter of the litigation, though there was no impediment to the court determining the issues between the parties originally before the court. The learned Judge, on a discussion of the English and Indian cases on the subject, came to the conclusion that a material question common to all the parties to the suit and to third parties should be tried once for all. He held that to secure this result the court had a discretion to add parties—a discretion which has to be judicially exercised, that is, that by adding the new parties the court should not inflict injustice upon the parties already on the record, in the sense

(1) [1943] 2 All E. R. 525. (2) (1881) I.L.R. 5 Mad. 52.

that they would be prejudiced in the fair trial of the questions in controversy.

The two Madras decisions in *Sri Mahant Prayaga Doss Jee Varu* v. *The Board of Commissioners for Hindu Religious Endowments, Madras* (1) and *Secy. of State* v. *M. Murugesa Mudaliar* (2) appear to have taken conflicting views on the question whether Government could be added as a party to the litigation not because it was directly interested in the subject-matter of the litigation, but because the law enacted by the legislature of that State had been questioned. This controversy appears to have been raised in the Federal Court in the case of *The United Provinces* v. *Mst. Atiqa Begum* (3). In that case the provincial legislature of the United Provinces, as it then was, had enacted the United Provinces Regularization of Remissions Act (XIV of 1938) precluding the courts from entertaining any question as to the validity of certain orders of remission of rents. The validity of that Act was questioned in a litigation between a landlord and his tenants. At the High Court stage the Provincial Government was added as a party to the litigation at the instance of the Advocate-General, with a view to enabling the Government to come up in appeal to the Federal Court in order to obtain a more authoritative pronouncement on the *vires* of the Act. In the Federal Court the power of the High Court to add the Provincial Government as a party was specifically questioned. Gwyer C. J. noticed the two Madras decisions referred to above but assumed that there was jurisdiction in the Court in a proper case to do so, and, therefore, did not express his considered opinion in view of the fact that his two colleagues, Sulaiman and Varadachariar JJ. had agreed, though for different reasons, in the view that the High Court had jurisdiction to implead the Government though it was only indirectly interested in the litigation. Sulaiman J. was inclined to take the view that there was a discretion in the High Court to add the Government as a party. On the other hand, Varadachariar J.

(1) (1926) I.L.R. 50 Mad. 34. (2) A.I.R. 1929 Mad. 443.
(3) [1940] F.C.R. 110.

1958

Razia Begum
v.
Anwar Begum

Sinha J.

was inclined to take the view that the State did not stand on the same footing as a private third party for all purposes. He took the view that the State as the guardian of the public interest should not be called upon to show some pecuniary or proprietary interest or interest in public revenue in the questions involved, to be added as a party. He also observed that in a case where the State intervention was concerned, "it must be decided on broad grounds of justice and convenience and not merely as turning on the interpretation of a particular rule in the Civil Procedure Code." Discussing the question whether it was a matter of discretion or of jurisdiction in the court to make an order adding a party, the learned Judge made the following observations:—

"In my opinion, there is no case here of defect of jurisdiction in the sense in which it is said that consent cannot cure a defect of jurisdiction. It is true that in *Moser* v. *Marsden* (1), Lindley L. J. observed that the question was not one of "discretion but of jurisdiction". But as the antithesis shows, the learned L. J. apparently had in mind the difference between the decision of the question of joinder on the interpretation of a rule of law and a direction given by the lower court in the exercise of its discretion, because in the latter case the court of appeal would generally be reluctant to interfere. It may even be regarded as a case of excess of jurisdiction within the meaning of s. 115 of the Civil Procedure Code, but that will not make the order void in the sense that it may be ignored or treated as if it had never been passed." It would thus appear that the courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the court. It may sometimes involve a question of jurisdiction in the limited sense in which it is used in s. 115 of the Code of Civil Procedure.

It is no use multiplying references bearing on the construction of the relevant rule of the Code relating to addition of parties. Each case has to be determined on its own facts, and it has to be recognized that no decided cases have been brought to our notice which

(1) [1892] 1 Ch. 487.

can be said to be on all fours with the facts and circumstances of the present case. There cannot be the least doubt that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit he should have a direct interest in the subject-matter of the litigation whether it raises questions relating to moveable or immoveable property. In the instant case, we are not concerned with any controversy as regards property or estate. Hence, all the cases cited at the bar, laying down that a person who has no present interest in the subject-matter cannot be added, are cases which were concerned with property rights. In this case, we are concerned primarily with a declaration as regards status which directly comes under the provisions of s. 42 of the Specific Relief Act. We are concerned, in this case, with the following provisions of s. 42:—

"42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and, the plaintiff need not in such suit ask for any further relief."

This section recognizes the right in any person to have a declaration made in respect of his legal character or any right to property. To such a suit for a mere declaration, any person denying or interested to deny the existence of any legal character or the alleged right to any property, would be a necessary party. The plaintiff-appellant chose to implead only her alleged husband, the Prince. There is no clear averment in the plaint that the defendant had ever denied the legal character in question, namely, the status of the plaintiff as his wife. The substance of the plaintiff's cause of action is stated in para. 3 of the plaint. From the words used in the said para. of the plaint, it is clear that the persons who are alleged to have known the existence of the relationship of husband and wife between the parties would include the respondents 1 and 2, and that the Prince had been trying to suppress the fact of

1958

Razia Begum
v.
Anwar Begum

Sinha J.

the marriage with the plaintiff so as to lead the members of his family to conclude that the plaintiff is not his wife. The gravamen of the charge against the Prince is that " he refuses to openly acknowledge the plaintiff as his legally wedded wife ", and that this conduct has cast a cloud on the plaintiff's status as such wife. Such a conduct on the part of the Prince, it is further alleged, is not only injurious and detrimental to the rights of the plaintiff, but is adversely affecting the rights of the issue of the marriage, meaning thereby, the three daughters by the plaintiff. It is thus clear, as was contended on behalf of respondents 1 and 2, that reading between the lines of the averments aforesaid, it is suggested that not only the defendant—respondent 3—but the other members of his family, including respondents 1 and 2, were interested in denying the plaintiff's alleged status, and that this suit was being instituted to clear the cloud cast not only upon the plaintiff's status as a legally wedded wife, but upon the status of the three daughters by her. It is clear, therefore, that if the plaintiff had been less disingenuous and had impleaded the first and the second respondents also, as defendants in the suit, the latter could not have been discharged from the action on the ground that they had been unnecessarily impleaded and that no cause of action had been disclosed against them. They would certainly have been proper parties to the suit. This is a very important aspect of the case which has to be kept in view in order to determine the question whether respondents 1 and 2 had been rightly added as defendants on their own intervention.

It is also clear on the words of the statute, quoted above, that the grant of a declaration such as is contemplated by s. 42, is entirely in the discretion of the court. At this stage it is convenient to deal with the other contention raised on behalf of the appellant, namely, that in view of the unequivocal admission of the plaintiff's claim by the Prince in his written statement and repeated as aforesaid in his counter to the application for intervention by respondents 1 and 2, no serious controversy now survives. It is suggested

that the declarations sought in this case would be granted as a matter of course. In this connection, our attention was called to the provisions of r. 6 of O. 12 of the Code of Civil Procedure, which lays down that upon such admissions as have been made by the Prince in this case the court would give judgment for the plaintiff. These provisions have got to be read along with r. 5 of O. 8 of the Code with particular reference to the *proviso* which is in these terms:—

"Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission."

The *proviso* quoted above is identical with the *proviso* to s. 58 of the Indian Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint may have been admitted. In this connection, the following passage in Anderson's "Actions for Declaratory Judgments", Vol. 1, p. 340, under art. 177, is relevant:—

"A claim of legal or equitable rights and denial thereof on behalf of an adverse interest or party constitutes a ripe cause for a proceeding, seeking declaratory relief. A declaration of rights is not proper where the defendant seeks to uphold the plaintiffs in such an action. The required element of adverse parties is absent."

"In other words the controversy must be between the plaintiff and the respondent who asserts an interest adverse to the plaintiff. In the absence of such a situation there is no justiciable controversy and the case must be characterized as one asking for an advisory opinion, and as being academic rather than justiciable."....

"i. e., there must be an actual controversy of justiciable character between parties having adverse interest."

Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged,. and if the

1958

Razia Begum
v.
Anwar Begum

Sinha J.

court, in pursuance of the terms of s. 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers. That the plaintiff herself or her legal advisers did not take the view contended for on her behalf, is shown by the fact that a few days after the filing of the written statement of the Prince, on April 27, Barkat Ali, the *Mujtahid*, who is alleged to have solemnized the marriage, was examined in court, and he gave his statement on oath in support of the plaintiff's claim. He also proved certain documents in corroboration of the plaintiff's case and his own evidence. This witness was not cross-examined on behalf of the defendant. It was stated before us, on behalf of respondents 1 and 2, that there were pieces of documentary evidence apart from certain alleged admissions made by or on behalf of the plaintiff, which seriously militate against the plaintiff's case and the statement of the witness referred to above. We need not go into all that controversy, because we are not, at this stage, concerned with the truth or otherwise of the plaintiff's case. At this stage we are only concerned with the question whether in adding respondents 1 and 2 as defendants in the action, the courts below have exceeded their powers. It is enough to point out at this stage that the plaintiff did not invite the court to exercise its powers under r. 6 of O. 12 of the Code of Civil Procedure, and, therefore, we are not called upon to decide whether the trial court was right in not pronouncing judgment on mere admission. The court, when it is called upon to make a solemn declaration of the plaintiff's alleged status as the defendant's wife, has, naturally, to be vigilant and not to treat it as a matter of course, as it would do in a mere money claim which is admitted by the defendant. The adjudication of status, the declaration of which is claimed by the plaintiff, is a more serious matter, because by its intendment and in its ultimate result it affects not only the persons actually before the court in the suit as originally framed, but also the plaintiff's progeny who are not parties to the action, and the respondents 1 and 2.

If the declaration of status claimed by the plaintiff is granted by the court, naturally the three daughters by the plaintiff would get the status of legitimate children of the Prince. If the decision is the other way, they become branded as illegitimate. The suit clearly is not only in the interest of the plaintiff herself but of her children also. It is equally clear that not only the Prince is directly affected by the declaration sought, but his whole family, including respondents 1 and 2 and their descendants, are also affected thereby. This, naturally leads us to a discussion of the effect of s. 43 of the Specific Relief Act, which goes with and is an integral part of the scheme of declaratory decrees which form the subject-matter of Ch. VI of the Act. That section is in these terms:—

"43. A declaration made under this Chapter is binding *only* on the parties to the suit, persons claiming through them *respectively*, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees."

On behalf of the appellant it was contended by the learned Attorney-General that the declaration of status sought in this suit by the plaintiff will be binding only upon her and the Prince, and being a rule of *res judicata* will bind only the parties to the suit and their privies. It was further contended that respondents 1 and 2 are in no sense such privies. The argument proceeds thus: Section 43 lays down a rule of *res judicata* in a modified form, and it was so framed as to make it clear beyond all doubt by the use of the word "only" that a declaration under s. 42 is binding on the parties to the suit and on persons claiming through them respectively. If any question arises in the future after the inheritance to the estate of the Prince opens out, it could not be said that the plaintiff and respondents 1 and 2 were claiming through different persons under a conflicting title which was the core of the rule of *res judicata*. In this connection, reliance was placed upon the decision of the Judicial Committee of the Privy Council in the case of *Syed Ashgar Reza Khan* v. *Syed Mahomed Mehdi Hossein*

1958

Razia Begum v. Anwar Begum

Sinha J.

Khan (1). That case lays down that a decision in a former suit that the common ancestor of all the parties to the subsequent suit was entitled to the whole of the profit of a market in dispute in the two litigations, as against his co-sharers in the *zamindari* in which the market was situate, does not operate as *res judicata* in a subsequent dispute between those who claim under him. In this connection, reliance was also placed upon a decision of the Madras High Court in the case of *Vythilinga Muppanar* v. *Vijayathammal* (2), to the same effect. Mr. Pathak, appearing on behalf of the Prince, the third respondent, supported the appellant by raising a further point that the words "claiming through" mean the same thing as "claiming under" in s. 11 of the Code of Civil Procedure, laying down the rule of *res judicata*, and that those words are not apt to refer to a declaration of a mere personal status, and that they mean the same thing as privy in estate as understood under the common law. He called our attention to the following passage in 'Bigelow on Estoppel', 6th Edn., at pp. 158 and 159:—

"In the law of estoppel one person becomes privy to another (1) by succeeding to the position of that other as regards the subject of the estoppel, (2) by holding in subordination to that other..... But it should be noticed that the ground of privity is property and not personal relation. To make a man a privy to an action he must have acquired an interest in the subject-matter of the action either by inheritance, succession, or purchase from a party subsequently to the action, or he must hold property subordinately."

He also drew our attention to similar observations in "Casperz on Estoppel". On the other hand, Mr. Purshottam and Sir Syed Sultan Ahmed, appearing on behalf of respondents 1 and 2, respectively, contended that "claiming through" and "claiming under" have not exactly the same significance in law, and that the rule laid down in s. 43 of the Specific Relief Act does not stand on the same footing as a rule of *res judicata* contained in s. 11 of the Code of

(1) (1903) L.R. 30 I.A. 71. (2) (1882) I.L.R. 6 Mad. 43.

Civil Procedure, or estoppel by judgment, as discussed in the works of Bigelow and Casperz, relied upon on behalf of the other side. On behalf of respondents 1 and 2 it was further contended that the suit was really intended not to bind the Prince who has shown no hostility to the claim, but to bind respondents 1 and 2. It was also contended that if the court were to grant the declaration that the plaintiff is the lawfully wedded wife of the Prince, if a controversy arises hereafter between the plaintiff and her children on the one side and respondents 1 and 2 on the other, this judgment will not only be admissible in evidence in that litigation, but will be binding upon them—on the plaintiff, because she is privy to the judgment, and on her children, because they will be claiming the benefit of the declaration through her, and on respondents 1 and 2, because they are admittedly the wife and son of the Prince and will be manifestly claiming through him.

In this connection, it has to be remarked that the discretion vested in a court to grant a merely declaratory relief as distinguished from a judgment which is capable of being enforced by execution, derives its utility and importance from the objects it has in view, namely, to "prevent future litigation by removing existing causes of controversy", "to quiet title" and "to perpetuate testimony", as also to avoid multiplicity of proceedings. This practice of granting declaratory reliefs, which originated in England in the Equity courts, has been very much extended in America by statutory provisions. In India, the law has been codified in the Specific Relief Act, in Ch. VI, and has, in a sense, extended the scope of the rule by providing for declarations not only in respect of claims to property but also in respect of disputes as regards status. From the terms of s. 42 of the Act, it would appear that the Indian courts have not been empowered to grant every form of declaration which may be available in America. In its very nature, a declaratory decree does not confer any new right, but only clears up mists which may have gathered round the title to property or to status or a legal character. When a

1958

Razia Begum
v.
Anwar Begum

Sinha J.

court makes a declaration in respect of a disputed status, important rights flow from such a judicial declaration. Hence, a declaration granted in respect of a legal character or status in favour of a person is meant to bind not only persons actually parties to the litigation, but also persons claiming through them, as laid down in s. 43 of the Act. It is, thus, a rule of substantive law, and is distinct and separate from the rule of *res judicata* or estoppel by judgment. The doctrine of *res judicata*, as it has been enunciated in a number of rules laid down in s. 11 of the Code of Civil Procedure, covers a much wider field than the rule laid down in s. 43 of the Specific Relief Act. For example, the doctrine of *res judicata* lays particular stress upon the competence of the court. On the other hand, s. 43 emphasizes the legal position that it is a judgment *in personam* as distinguished from a judgment *in rem*. A judgment may be *res judicata* in a subsequent litigation only if the former court was competent to deal with the later controversy. No such considerations find a place in s. 43 of the Specific Relief Act. Again, a previous judgment may be *res judicata* in a subsequent litigation between parties even though they may not have been *eo nomine* parties to the previous litigation or even claiming through them. For example, judgment in a representative suit, or a judgment obtained by a presumptive reversioner will bind the actual reversioner even though he may not have been a party to it, or may not have been claiming through the parties in the previous litigation.

When a declaratory judgment has been given, by virtue of s. 43, it is binding not only on the persons actually parties to the judgment but their privies also, using the term 'privy' not in its restricted sense of privy in estate, but also privy in blood. Privity may arise (1) by operation of law, for example, privity of contract; (2) by creation of subordinate interest in property, for example, privity in estate as between a landlord and a tenant, or a mortgagor and a mortgagee; and (3) by blood, for example, privity in blood in the case of ancestor and heir. Otherwise, in some conceivable cases, the provisions of s. 43, quoted

above, would become *otiose*. The contention raised on behalf of the appellant, which was strongly supported by the third respondent through Mr. Pathak, as stated above, is that a declaratory judgment would not bind anyone other than the party to the suit unless it affects some property, in other words, unless the parties were privy in estate. But such a contention would render the provisions of s. 43 aforesaid, applicable only to declarations in respect of property and not declarations in respect of status. That could not have been the intendment of the statutory rule laid down in s. 43. Sections 42 and 43, as indicated above, go together, and are meant to be co-extensive in their operation. That being so, a declaratory judgment in respect of a disputed status, will be binding not only upon the parties actually before the court, but also upon persons claiming through them respectively. The use of the word 'only' in s. 43, as rightly contended on behalf of the appellant, was meant to emphasize that a declaration in Ch. VI of the Specific Relief Act, is not a judgment *in rem*. But even though such a declaration operates only *in personam*, the section proceeds further to provide that it binds not only the parties to the suit, but also persons claiming through them, respectively. The word 'respectively' has been used with a view to showing that the parties arrayed on either side, are really claiming adversely to one another, so far as the declaration is concerned. This is another indication of the sound rule that the court, in a particular case where it has reasons to believe that there is no real conflict, may, in exercise of a judicial discretion, refuse to grant the declaration asked for for oblique reasons.

As a result of these considerations, we have arrived at the following conclusions :—

(1) That the question of addition of parties under r. 10 of O. 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case ; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent

1958

Razia Begum
v.
Anwar Begum

Sinha J.

jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in s. 115 of the Code;

(2) That in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject matter of the litigation;

(3) Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy;

(4) The cases contemplated in the last proposition have to be determined in accordance with the statutory provisions of ss. 42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission;

(6) The result of a declaratory decree on the question of status such as in controversy in the instant case affects not only the parties actually before the court but generations to come, and, in view of that consideration, the rule of 'present interest' as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in s. 43 of the Specific Relief Act is not exactly a rule of *res judicata*. It is narrower in one sense and wider in another.

Applying the propositions enunciated above to the facts of the instant case, we have come to the conclusion that the courts below did not exceed their power in directing the addition of respondents 1 and 2 as parties-defendants in the action. Nor can it be said that the exercise of the discretion was not sound. Furthermore, this case comes before us by special leave and we do not consider that it is a fit case where we should interfere with the exercise of discretion by the courts below. The appeal is, accordingly,

dismissed. As regards the question of costs, we direct that it will abide the ultimate result of the litigation and will be disposed of by the trial court.

IMAM J.—I regret I cannot agree with the opinion of my learned brethren expressed in the judgment just delivered.

The appellant in her plaint had asked for a declaration that she was a legally wedded wife of respondent 3 and that she was also entitled to receive from him *Kharch-e-Pandan* at the rate of Rs. 2,000 per month. This respondent filed his written statement in which he unequivocally admitted that the appellant was married to him and that she was also entitled to the *Kharch-e-Pandan* as claimed in the plaint. He further admitted that the appellant bore him three issues out of the marriage. The appellant sought no relief or any declaration against respondents 1 and 2 as, indeed, she could not have, because she had no cause of action against them. There is nothing in the pleadings of the appellant and respondent 3 which discloses that respondents 1 and 2 have any cause of action against the appellant. Respondents 1 and 2, however, filed an application under O. 1, r. 10(2), of the Code of Civil Procedure before the Judge of the City Civil Court, Hyderabad, praying that they should be added as parties to the suit filed by the appellant. The Judge of the City Civil Court allowed the application and his decision was affirmed by the High Court. The question for decision in this appeal is whether the Judge of the City Civil Court was justified in adding respondents 1 and 2 as parties to the suit and whether the decision of the High Court upholding his order should be affirmed.

The provisions of O. 1, r. 1, state as to who may be joined as plaintiffs in a suit and O. 1, r. 3, states who may be joined as defendants. The parties who are to be joined as plaintiffs and defendants in a suit are persons in whom and against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons were parties in separate suits, any

1958

Razia Begum
v.
Anwar Begum

Imam J.

common question of law or fact would arise. Independent of this, a court has jurisdiction under O. 1, r. 10(1), to substitute or add as plaintiff any person whom it considers necessary for the determination of the real matters in dispute. Under O. 1, r. 10(2), the court has the power to strike off a party who has been improperly joined, whether as plaintiff or defendant, and to join, as plaintiff or defendant, any person who ought to have been joined, or whose presence before the court may be necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit. It is quite obvious from the contents of the plaint and the written statement of respondent 3 that there was no occasion for the appellant to have joined respondents 1 and 2 as defendants in the suit. There remains, then, to consider whether the circumstances appearing in this case justified the Judge of the City Civil Court to add respondents 1 and 2 as defendants under the provisions of O. 1, r. 10(2).

Respondents 1 and 2 in their application under O. 1, r. 10(2), of the Code of Civil Procedure, in essence, relied upon the five following grounds for their plea that they should be added as defendants in the suit:

(1) That respondent 1 was the lawful and legally wedded wife of respondent 3,

(2) That respondent 2 was the son of respondent 3,

(3) That respondents 1 and 2 should be joined as parties to the suit because the question to be adjudicated upon would seriously affect their rights and interest in the estate of respondent 3,

(4) That by adding respondents 1 and 2 as parties neither a new cause of action would be introduced nor would the nature of the suit be altered,

(5) That the issue to be tried in the suit, after respondents 1 and 2 were added as parties, would still be the same as the case made by the appellant was that respondent 3 was interested in denying the appellant's marriage to respondent 3—a fact which respondents 1 and 2 were equally interested in denying.

The first two grounds afford no justification for respondents 1 and 2 being added as parties to the suit, where

the only question to be decided is whether the appellant is married to respondent 3 and whether he had contracted to pay to the appellant Rs. 2,000 a month as *Kharch-e-pandan*. Even if the appellant successfully proved that she was married to respondent 3, who had contracted to pay her Rs. 2,000 per month as *Kharch-e-pandan*, the status and the rights of respondents 1 and 2 as wife and son of respondent 3 would remain unaffected. A Mohammedan is entitled to marry more than once and have wives to the number four at one and the same time. This is his right under his personal law and no one can question the exercise of this right by him. In the suit between the appellant and respondent 3, the question as to whether the appellant was married to respondent 3 was a matter entirely personal to the appellant and respondent 3. The appellant claimed that she was lawfully married to respondent 3. It was open to respondent 3 to either deny or admit her claim. In fact, respondent 3 had admitted the claim of the appellant that she was married to him. It is not open to anyone else in the present litigation to say that he has falsely made such an admission. It is true that respondents 1 and 2 have alleged collusion between the appellant and respondent 3. No positive facts are asserted in support of this. The suggestion is based merely on suspicion. Unless the court is justified in adding respondents 1 and 2 as defendants in the suit the suggestion made by them that there is collusion between the appellant and respondent 3 should be ignored by the court on the simple ground that respondents 1 and 2 have no *locus standi* to make any such representation in the present case.

The 3rd, 4th and 5th grounds may be considered together as they are inter-connected. Grounds 4 and 5 suggest that there would be neither a new cause of action introduced nor would the nature of the suit be altered and the issue to be tried in the suit would still be the same even if respondents 1 and 2 were added as parties. The only issue in the suit filed by the appellant is whether she was married to respondent 3 and whether there was a contract by the latter to pay

1958

Razia Begum v. Anwar Begum

Imam J.

her Rs. 2,000 per month as *Kharch-e-pandan*. If respondents 1 and 2 are added as parties, questions relating to right of inheritance in the estate of respondent 3 would arise for determination in addition to the only issue stated above in the case. The main ground, upon which respondents 1 and 2 claim that they should be added as parties to the suit, is to be found in the 3rd ground which, in substance, is that if the appellant is declared to be lawfully wedded to respondent 3, then the rights and interests of respondents 1 and 2 in the estate of respondent 3 would be affected. In other words, in the estate of respondent 3, on his death, in addition to respondents 1 and 2, the appellant and her three children by him would have rights of inheritance. Consequently, the extent of inheritance of respondents 1 and 2 in the estate of respondent 3 would be considerably diminished. It was urged that if the appellant is given the declaration, which she seeks, the judgment of the court would be in the exercise of matrimonial jurisdiction and it would be a judgment *in rem* as stated in s. 41 of the Indian Evidence Act. Such a declaration would also be binding on respondents 1 and 2 by virtue of the provisions of s. 43 of the Specific Relief Act. The appellant asked for a declaration under s. 42 of the Specific Relief Act. This section permitted a person who claimed to be entitled to any legal character, or to any right to property, to institute a suit against any person denying, or interested to deny, such character or right. Respondents 1 and 2 was interested in denying the appellant's status as a wife and the status of her three children as the legitimate children of respondent 3. A declaration in her favour would be binding on respondents 1 and 2 and they would never be in a position to disprove the appellant's marriage to respondent 3. This was an impossible situation where the declaration had been obtained from a court as the result of collusion between the appellant and respondent 3.

This submission presupposes that respondents 1 and 2 would survive respondent 3. During the lifetime of respondent 3 neither the appellant nor her children on

the one hand nor respondents 1 and 2 on the other have any rights whatsoever in his estate under the Mohammedan law. During the lifetime of respondent 3 respondents 1 and 2 would have the right to be maintained by him and, if the appellant is also his wife, then she and her children would also have the right to be maintained by him. The appellant and respondent 1 would also have rights arising out of a contract, if any, between them and respondent 3. None of these rights, however, are rights or interests in the estate of respondent 3. The submission also presupposes that on the death of respondent 3 he would have left behind some estate to be inherited by his heirs. These submissions are entirely speculative and afford no basis for the impleading of respondents 1 and 2 as parties to the appellant's suit. It was said, however, that the right to inherit is a present right in respondents 1 and 2 and if the appellant is declared to be the wife of respondent 3, then that right to inheritance is affected. This contention is erroneous and there is no legal basis to support it. If the appellant is declared to be the wife of respondent 3 such a declaration could not affect the right to inherit on the part of respondents 1 and 2 in the estate of respondent 3, assuming that respondent 3 on his death left an estate to be inherited and that the appellant and her children and respondents 1 and 2 survived him. The extent of the inheritance of each one of these may thus become less but so far as that is concerned it cannot be predicated during the lifetime of respondent 3 as to what would be the extent of the inheritance of his heirs. Under the Mohammedan law, by which the parties are governed, respondent 3 could yet validly marry two other women and have children from them, in which case, the inheritance, if any, could not be to the same extent if respondent 3 died leaving only respondents 1 and 2 as his heirs. The entire question raised by respondents 1 and 2 is based on the supposition that they have rights in the estate of respondent 3. Under the Mohammedan law they have no such rights. It is only in the event of their surviving respondent 3 that their rights will vest in his estate and the extent of

1958

Razia Begum v. Anwar Begum

Imam J.

their inheritance will be calculated on the number of persons entitled to inherit his estate at the time of his death.

It was urged, however, that unless respondents 1 and 2 are now given an opportunity to show that there was no valid marriage between the appellant and respondent 3, a declaration that there was a marriage between these two persons would be binding on them by virtue of the provisions of s. 43 of the Specific Relief Act. If, therefore, on the death of respondent 3 a question arose as to who were entitled to inherit his estate, respondents 1 and 2 would not be able to question the rights of the appellant and her children and they would be adversely affected by the declaration. It is somewhat doubtful, having regard to the terms of s. 43, that such a declaration in the present suit would be binding on respondents 1 and 2 as they would not be claiming their right to inheritance through the appellant and respondent 3 respectively. Assuming, however, that such a declaration would be binding on them, that would be no justification for their being impleaded in the present litigation where the issue is not one of inheritance but one of marriage between the appellant and respondent 3. If the submission has any substance it might as well be said by any one that he should be impleaded as a party to a suit and should be allowed to contest the suit, although there was no cause of action against him, because the decree in the suit would bind him on the ground of *res judicata*.

It is true that in a suit under s. 42 of the Specific Relief Act it is discretionary with the court to make or not to make the declaration asked for. The exercise of that discretion, however, has to be judicial. In the present case there does not appear to be any legal impediment in the way of the court refusing to make the declaration asked for since respondent 3 had acknowledged the marriage and had admitted the claim for Rs. 2,000 per month as *Kharch-e-pandan*. The appellant has not asked for any sum of money to be decreed in her favour. There is no cause of action now left to the appellant which can be the basis for the present suit. The appellant could rely upon the

acknowledgement which raises a presumption under the Mohammedan law that she is married to respondent 3. There appears to be no good ground for adding respondents 1 and 2 as parties to the present suit. If hereafter on the happening of a certain event and the existence of certain circumstance any question arose whether the appellant was married to respondent 3, then those who were interested in disproving the marriage would be in a position to do so and rebut the presumption arising from the acknowledgement.

Under O. 1, r. 10, of the Code of Civil Procedure the court has the power to pass orders regarding the adding of parties or striking off the name of a party. Whether the exercise of this power is a matter of jurisdiction or of discretion appears to have been the subject of difference of opinion in the courts of law here and in England. Whichever view may be correct it is patent that resort to the exercise of such power could only be had if the court is satisfied that it is necessary to make an order under O. 1, r. 10, in order to effectually and completely adjudicate upon and settle all questions involved in the suit. The court ought not to compel a plaintiff to add a party to the suit where on the face of the plaint the plaintiff has no cause of action against him. If a party is added by the court without whose presence all questions involved in the suit could be effectually and completely adjudicated upon, then the exercise of the power is improper and even if it be a matter of discretion such an order should not be allowed to stand when that order is questioned in a superior court. The plaintiff is entitled to choose as defendants against whom he has a cause of action and he should not be burdened with the task of meeting a party against whom he has no cause of action. It was, however, suggested that on the face of the plaint not only respondent 3 was interested in denying his marriage with the appellant but a legitimate inference could be drawn from the contents of the pleadings that respondents 1 and 2 were also interested in denying the marriage. No allegation made in the pleadings even remotely suggests that respondents 1 and 2 were interested to deny the alleged

1958

Razia Begum
v.
Anwar Begum

Imam J.

marriage of the appellant to respondent 3 or were denying the same. Under s. 42 of the Specific Relief Act a suit may be instituted against any person denying or interested to deny the plaintiff's legal character or right to any property. The plaint does not suggest that respondents 1 and 2 were denying the appellant's status as wife of respondent 3. Such an issue was raised by the appellant against respondent 3 only. In law, it cannot be said that respondents 1 and 2 are interested to deny the status of the appellant as the wife of respondent 3 because the status of respondent 1 as wife and respondent 2 as the son of respondent 3 is not in the least affected even if the appellant is declared to be the wife of respondent 3, as under the Mohammedan law respondent 3 is entitled to have both the appellant and respondent 1 as his wives and children through them. The true legal position in the present suit between the appellant and respondent 3 is that respondents 1 and 2 have no *locus standi* in such a suit. There is no danger of multiplicity of suits during the lifetime of respondent 3. The suggestion that the present suit would lead to multiplicity of suits is founded on an assumption which no court of law can assume. It cannot be assumed that respondent 3 would die first. It may well be that he may survive both respondents 1 and 2, in which case, no question of any suit coming into existence at their instance would arise. If the order allowing respondents 1 and 2 to be added as parties in a suit of the present nature is allowed to stand it will open the way to a wider exercise of powers under O. 1, r. 10, and in a manner which was not contemplated by the Code of Civil Procedure, or s. 42 of the Specific Relief Act or permissible under the Mohammedan law.

I would, accordingly, allow the appeal as both the courts below were in error in supposing that this was a case in which the provisions of O. 1, r. 10, applied and would set aside the orders of the courts below. The appellant is entitled to her costs throughout.

BY COURT: The appeal is dismissed. Costs to abide the result of litigation in the trial court.

Appeal dismissed.