NARAIN LAL & ORS. A

v.

SUNDER LAL (DEAD) & ORS.

May 4, 1967 .

[R. S. BACHAWAT, J. M. SHELAT AND V. BHARGAVA, JJ.] B

Code of Civil Procedure (Act 5 of 1908), s. 92— Permission of Advocate-General for filing suit—Permission given to four persons— One dies—Surviving three whether can file suit without obtaining fresh permission.

Four persons obtained the consent of the Advocate-General of Rajasthan to institute a suit against the respondents under s. 92 of the C Code of Civil Procedure. Shortly thereafter one of the said four persons died and the suit was instituted by the three survivors. On the preliminary issue whether the suit filed by three persons, when the permission had been given to four, was maintainable, the trial court held that it was. The High Court, however, in revision held the suit not to be maintainable. Appeal was filed in this Court by special leave.

HELD : An authority to sue given to several persons without more D is a joint authority and must be exercised by all jointly, and a suit by some of them only is not competent. When sanction in the present case was given to four persons and one of them died before the institution of the suit, a suit by the remaining three was incompetent. Fresh sanction must be obtained by the survivors for the institution of the suit. [918D-E, 919B]

Muddala Bhagavannarayana v. *Vadapalli Perumallacharyulu,* 29 E M.L.J. 231, *Pitchayya & Anr.* v. *Venkatakrishnamacharlu & eleven Ors.* I.L.R. 53 Mad. 223, *Sibte Rasul* v. *Sibte Nabi & Ors.* I.L.R. (1943) All 112 *Venkatesha Malia* v. *B. Ramaya Hegade and twelve Ors.* I.L.R. 38 Mad. 1192, *Musammat Ali Begam* v. *Badr-ul-Islam Ali Khan,* L.R. 65 I.A. 198, *Raja Anand Rao* v. *Ramdas Daduram,* L.R. 48 I.A. 12 and *Sheo Ram* v. *Ram Chand & Ors.,* A.I.R. 1940 Lah. 356, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 767 of F 1964.

Appeal by special leave from the judgment and order dated August 14, 1961 of the Rajasthan High Court in D. P. Civil Misc. Application No. 128 of 1960.

Gopi Nath Kunzru, W. S. Barlingay and *Ganpat Rai,* for the G appellant.

C. B. Agarwala, K. K. Jain, H. K. Puri and *Uma Mehta,* for respondents Nos. 3, 4, 5, 7, 12, 13, 15-18, 21, 23 and 24.

The Judgment of the Court was delivered by

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Bachawat, J. On September 10, 1955, Narain Lal, Mool Chand, Mangilal and Kesharichand obtained the consent in writing of the Advocate General, Rajasthan to institute a suit against

A the respondents under S. 92 of the Code of Civil Procedure. The consent was in these terms :

> "For the reasons detailed above I grant permission to the applicants Sarvashri (1) Narainlal, (2) Mool Chand, (3) Mangilal and (4) Seth Kesharichand for filing suit against the opposite parties Shri Malilal
B Kasliwal and 27 other members and office holders of the executive committee Jain Atishaya Kshetra Shri Mahabir Swami Temple Chandangaon, for the reliefs detailed in para 28 sub-paras 1 to 5 and 7 of the draft plaint filed by them before me."

C Shortly thereafter Mangi Lal died. On March 6, 1956, Narain Lal, Mool Chand and Kesari Chand instituted a suit against the respondents under S. 92 of the Code of Civil Procedure, claiming a declaration that the temple of Shri Mahabirji at Naurangabad and the appertaining properties were a public charitable trust for the benefit of the Shwetambar Sangh of the Jain community or of the Jain community as a whole and for other reliefs. On
D March 9, 1958, Kesari Chand died. The trial court raised and tried the following preliminary issue :

> "Whether the suit is not maintainable on the strength of the permission obtained by the plaintiffs along with Mangi Lal who died prior to the institution of the suit ?"

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The trial court held that the suit was maintainable. The High Court in its revisional jurisdiction set aside the order of the trial court and held that the suit was not maintainable. The present appeal has been filed from the order of the High Court by special leave.

F A suit claiming any of the reliefs specified in sub-s. (1) of S. 92 of the Code of Civil Procedure in respect of a trust for public purposes of a charitable or religious nature may be instituted by the Advocate-General or "two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General", and save as provided by the Religious
G Endowments Act 1863 and certain other laws, no suit claiming such reliefs in respect of any such trust can be instituted except in conformity with sub-s. (1) of S. 92. In the present case, four persons obtained the necessary sanction of the Advocate General, one of them died before the suit was filed, and the remaining three instituted the suit. The question is whether the suit is brought in conformity with S. 92(1).

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The decided cases show that a suit under S. 92 must be brought by all the persons to whom the sanction of the Advocate General has been given, and a suit instituted by some of them

only is not maintainable. In *Muddala Bhagavannarayana* v. *Vadapalli Perumallacharyulu*(1) where the sanction was given to four persons and two of them alone brought the suit alleging that the other two had been won over by the defendants and had refused to join as plaintiffs, it was held that the suit was not maintainable. In *Pitchayya and another* v. *Venkatakrishnamacharlu and eleven others*(2), where the sanction was given to three persons, the court held that the suit instituted by two of them was invalidly brought and the defect could not be cured by impleading the other person as a defendant. In *Sibte Rasul* v. *Sibte Nabi and others*(3), where four persons obtained the sanction and the suit was instituted by three of them, it was held that the suit was incompetent and the defect could not be cured by impleading the fourth as a plaintiff at the date of the delivery of the judgment. We may add that in *Venkatesha Malia* v. *B. Ramaya Hegade and twelve others*(4) where the sanction to sue under S. 18 of the Religious Endowments Act 1863 was given by the district judge to two persons, it was held that only one of them could not institute the suit.

We hold that an authority to sue given to several persons without more is a joint authority and must be acted upon by all jointly, and a suit by some of them only is not competent. As Sir George Rankin said in *Musammat Ali Begam* v. *Badr-ul-Islam Ali Khan*(5), "where the consent in writing of the Advocate General or Collector is given to a suit by three persons as plaintiffs, the suit cannot be validly instituted by two only. The suit as instituted must conform to the consent." Once the representative suit is validly instituted, it is subject to all the incidents of such a suit; the subsequent death of a plaintiff will not render the suit incompetent, see *Raja Anand Rao* v. *Ramdas Daduram*(6), and an appeal by some of the plaintiffs impleading the remaining plaintiff as a respondent is not incompetent because all did not join as appellants, see *Musammat Ali Begam* v. *Badr-ul-Islam Ali Khan*(5).

In *Sheo Ram* v. *Ram Chand and others*(7), the sanction of the Collector to bring a suit under S. 92 was given to twenty persons. One of them died before the suit was brought and the remaining nineteen instituted the suit. Skempg, J. held that in view of the two Privy Council rulings the suit was validly instituted. But he erroneously assumed that in *Musammat Ali Begam* v. *Badr-ul-Islam Ali Khan*(5) it was held that where the sanction had been given to three persons, a suit by two of them only was validly

(1) 29 M.L.J. 231.
(2) I.L.R. 53 Mad. 223.
(3) I.L.R. (1943) All. 112.
(4) I.L.R. 38 Mad. 1192.
(5) I.L.R. 65 I. A. 198.
(6) L.R. 48 I.A. 12.
(7) A.I.R. 1940 Lah. 356.

A instituted. From the report of *Raja Anand Rao* v. *Ramdas Daduram*(1), it is not clear whether all the persons to whom the sanction was given brought the suit, and the point raised and decided was that the death of one of the plaintiffs after the institution of the suit did not render the suit incompetent. We are unable to agree with the Lahore ruling. Where sanction is given
B to four persons and one of them dies before the institution of the suit, a suit by the remaining three is incompetent. Fresh sanction must be obtained by the survivors for the institution of the suit. We must hold that the suit brought by the appellants was incompetent. The High Court rightly held that the suit was not maintainable. This judgment will not bar the institution of a
C fresh suit in conformity with a fresh consent obtained from the Advocate-General or Collector.

In the result, the appeal is dismissed without costs.

G.C. *Appeal dismissed.*

(1) L.R. 48 I.A. 12.