

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Bandukula Arachchige Anura
Kumara Silva,
No. 211/60,
Old Kottawa Road,
Mirihana.

Defendant-Petitioner-Appellant-
Appellant

SC/APPEAL/194/2018

WP/HCCA/MT/07/14

DC NUGEGODA L/389/11

Vs.

1. Hettiarachchige Don Rejinorld
Upali Gunathilake,
No. 465/5,
Ganahena,
Battaramulla.
Plaintiff-Respondent-Respondent-
Respondent

2. Hettiarachchige Don Damien
Prience Roach Gunatilleke,
No. 465/5,
Ganahena,
Battaramulla.
Respondent-Respondent-
Respondent

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.
Menaka Wijesundera J.

Counsel: Maura Gunawansha, P.C., with Yashodi Wijayasekara and Senuri Mudannayake for the Defendant-Petitioner-Appellant-Appellant.

Athula Bandara Herath with Ms. Chamodi Sandunika for the Plaintiff-Respondent-Respondent-Respondent.

Chathusala Jayasinghe for the Respondent-Respondent-Respondent.

Argued on: 13.02.2026

Decided on: 17.03.2026

Samayawardhena, J.

Introduction

The plaintiff instituted this action in the District Court of Nugegoda seeking a declaration of title to the land in suit, ejectment of the defendant therefrom, and damages. The plaintiff relied on the deed of transfer annexed to the plaint marked P6 to prove his title to the land, which had been executed by the alleged power of attorney holder of the real owner. The power of attorney was produced marked P7. It is not in dispute that the real owner died one week after the execution of deed P6.

The defendant, in his answer, pleaded that the real owner had, by a last will allegedly executed one day prior to his death, bequeathed the said property together with other properties to him. He further averred that P6 and P7 are fraudulent documents prepared in collusion among the plaintiff, the notary, and the power of attorney holder. While seeking dismissal of the plaintiff's action, the defendant also made a claim in reconvention praying for declarations that P6 and P7 are null and void, not being acts and deeds of the deceased.

Thereafter, the defendant moved the District Court in terms of section 18 of the Civil Procedure Code to add the power of attorney holder and the notary as parties to the action. The plaintiff, the power of attorney

holder, and the notary filed objections to that application. The learned District Judge refused the application, and on appeal, the High Court affirmed that order. The present appeal with leave obtained is against the judgment of the High Court. This Court granted leave to appeal on the following two questions of law:

- (a) Did the High Court err in law in failing to apply the wider construction attributed to section 18 of the Civil Procedure Code?
- (b) Did the High Court fail to consider that, in view of the allegations of fraud and collusion against the power of attorney holder and the notary, the defendant could not effectively set up his defence or maintain his claim in reconvention, nor enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, without adding them as parties?

Subsequent to the grant of leave, the notary passed away. Accordingly, the issue left for determination is whether the application to add the power of attorney holder as a party ought to have been allowed.

Order of the District Court and the High Court

Although the application before the District Court was to add both the power of attorney holder and the notary as parties, the learned District Judge, in his order, considered only the application insofar as it related to the addition of the notary and failed altogether to address the application to add the power of attorney holder. Therefore, there is a fundamental omission that amounts to an error on the face of the order of the District Court.

The High Court affirmed the refusal to add the parties, predominantly on the basis that in a *rei vindicatio* action such as the present, the initial burden rests on the plaintiff to establish his title, particularly in circumstances where the defendant has challenged the validity of deed P6. The High Court took the view that there was no necessity to add the

power of attorney holder and the notary as parties, as they would, in any event, be necessary witnesses for the plaintiff to succeed in the action.

Argument before the Supreme Court

At the hearing before this Court, we explored the possibility of arriving at a consensus, inasmuch as the present appeal arises from an interlocutory order made even prior to the pre-trial stage. Learned President's Counsel for the defendant submitted that he would not press the application to add the power of attorney holder as a party, provided he is permitted to raise issues on the cross-claim set out in the answer against the power of attorney holder and there is a guarantee that the power of attorney holder would be called as a witness for the plaintiff at the trial.

It is to be noted that the plaintiff and the power of attorney holder are represented by the same counsel. In response, learned counsel stated that he is unable to give an undertaking that the power of attorney holder would be called as a witness at the trial, but that he would not object to the framing of issues in respect of the cross-claim contained in paragraph 8 of the answer. Paragraph 8 of the answer reads as follows:

ඉහත තත්වයන් යටතේ මෙම විත්තිකරු කියා සිටින්නේ පැමිණිල්ල සමඟ “පැ6” ලෙස සලකුණු කොට ඇති ආර්.සී.බී. ජෝෂ් නොතාරිස් විසින් 2011.09.16 දින ලියා සහතික කළ බවට උද්දේශිත ලෙස කියා පාණු ලබන අංක 2139 දරන ලේඛනය කිසිදු ප්‍රතිෂ්ඨාවක් නොසැපයූ එකී මිය ගිය අයගේ කාර්යක් හෝ ක්‍රියාවක් නොවන කුඩා හා වංචනික ලෙස සකස් කරගනු ලැබූ ලේඛනයක් වන බවත් එකී කුඩා හා වංචනික ඔප්පුව සකස් කර ගැනීමට මිය ගිය අයගේ උද්දේශිත ඇටර්නි බලකරු ලෙස පෙනී සිටිමින් ඉහත කී හෙට්ටිආරච්චිගේ ඩොන් ඩේමියන් ප්‍රින්ස් රොජ් ගුණතිලක සකස් කරගෙන ඇති ප්‍රසිද්ධ නොතාරිස් ඩී.ජී.පී. කරුණාරත්න නමැති අය 2004.04.20 දින ලියා සහතික කළ බවට දැක්වෙන උද්දේශිත “පැ7” ලෙස සලකුණු කරන ලද ඇටර්නි බලපත්‍රයද එකී මිය ගිය අයගේ කාර්යක් හෝ ක්‍රියාවක් නොවන ගුණා හා බලරහිත ලේඛනයක් බවට ප්‍රකාශයක් ලබා ගැනීමට ඉහත පැමිණිලිකරුට ද එකී හෙට්ටිආරච්චිගේ ඩොන් ඩේමියන් ප්‍රින්ස් රොජ් ගුණතිලක යන අයට හා ඉහත කී

ආර්.සී.බී. ජෝෂ් නමැති අයට එරෙහිව මෙම නඩුවේදීම හරස් ඉල්ලීමක් ඉදිරිපත් කිරීම උදෙසා නඩු නිමිත්තක් ඉහත විත්තිකරු වෙත උපවය වී ඇති බවත්ය.

Paragraph 8 of the answer contains two distinct cross-claims. The first is founded on a cause of action alleged to have accrued to the defendant against the notary in respect of deed P6. That aspect is no longer a live issue in view of the subsequent death of the notary. The second cross-claim is founded on a cause of action alleged to have accrued to the defendant against the power of attorney holder in respect of the power of attorney P7, the defendant asserting that it is a nullity, not being an act and deed of the deceased, but a fraudulent document.

If an issue based on that pleading is permitted to be framed in respect of the validity of P7, the question arises whether, after trial, the Court could determine such issue against the power of attorney holder without him being made a party and without affording him an opportunity to be heard. The answer must necessarily be in the negative. A Court cannot make a determination adverse to a person who is not a party to the case, or at least without affording such person an opportunity of being heard, even if he is not a party, as this would violate the fundamental principle of natural justice, *audi alteram partem*. Learned counsel for the plaintiff does not state that the power of attorney holder will be summoned as a witness for the plaintiff, and learned President's Counsel for the defendant states that he cannot call the power of attorney holder as an adverse witness.

Accordingly, if that issue is to be allowed, the power of attorney holder would be a necessary party to the action.

Cross-claim and alternative claim

A cross-claim is not a mere defensive plea but a substantive assertion of rights. In terms of section 75(e) of the Civil Procedure Code, "*a claim in reconvention duly set up in the answer shall have the same effect as a*

plaint in a cross action so as to enable the Court to pronounce a final judgment in the same action both on the original and on the cross claim.”

In addition to the cross-claim set out in paragraph 8 of the answer, the defendant has pleaded an alternative claim in paragraph 9, which reads as follows:

ඉහත විත්තිකරු තවදුරටත් කියා සිටින්නේ එකී “පැ7” ලෙස සලකුණු කරන ලද අංක 533 දරණ උද්දේශිත ඇටර්නි බලපත්‍රය වලංගු ලේඛනයක් ලෙස උපකල්පනය කළ ද එකී උද්දේශිත ඇටර්නි බලපත්‍රය පදනම් කරගෙන මිය ගිය අයගේ දේපළ පවරා දීමට නීතිමය හැකියාවක් හා/හෝ ශක්තූතාවයක් එකී හෙට්ටිආරච්චිගේ ඩොන් ඩේමියන් ගුණතිලක යන අයට නොතිබූ හෝ නොපැවති බවට ප්‍රකාශයක් ඉහත හරස් ඉල්ලීමට විකල්පව මෙම නඩුවේදීම ලබා ගැනීම උදෙසා විකල්ප ලෙස නඩු නිමිත්තක් ඉහත විත්තිකරු වෙත උපවය වී ඇති බවත්ය.

It is apparent that the cross-claim and the alternative claim are mutually contradictory.

Although the law may permit alternative pleadings in appropriate circumstances, a defendant ought not to be permitted to advance alternative claims that is fundamentally inconsistent with each other. To allow such a course would be to permit a party to approbate and reprobate within the same pleading, which the law does not countenance. It would also cause prejudice to the opposite party and cause confusion in the orderly conduct of proceedings. Judges of original Courts ought not to permit the framing of issues founded on such mutually contradictory positions. A party to an action must elect one of the two alternatives, but not both.

As Sharvananda C.J. stated in the oft-cited case of *Ranasinghe v. Premadharm* [1985] 1 Sri LR 63 at 70:

The rationale of the above principle appears to be that a defendant cannot approbate and reprobate. In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not

both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other; he cannot affirm and disaffirm. Hence a defendant who denies tenancy cannot consistently claim the benefit of the tenancy which the Rent Act provides.

In *Sudarshani v. Somawathi* (SC/APPEAL/173/2011, SC Minutes of 06.04.2017), Prasanna Jayawardena J. stated that “*where a plaintiff who has executed a deed transferring a land to a defendant, prays for a declaration that the defendant holds the land in Trust for the benefit of the plaintiff, that plaintiff cannot, at the same time, also ask for a declaration that the same deed is null and void on the ground of laesio enormis.*” Constructive trust and *laesio enormis* rest on mutually inconsistent legal principles and cannot in law be maintained together.

It follows that the alternative claim pleaded in paragraph 9 of the answer cannot stand.

Section 18 of the Civil Procedure Code

Although the law relating to the addition of parties is well settled, this issue continues to arise before District Courts. It is possible that the decision in *The Chartered Bank v. L.N. De Silva* (1964) 67 NLR 135 has contributed to some confusion when contrasted with the wider scope and object of section 18 of the Civil Procedure Code. In that case, Sri Skanda Raja J. and Alles J. held that “*A person who is no more than an important witness in a case is not liable to be added as a party under section 18(1) of the Civil Procedure Code on the pretext that his presence is necessary in order to enable the court effectually and completely to adjudicate upon all the questions involved in the action.*”

Section 18 of the Civil Procedure Code provides for the deletion, addition and alteration of parties.

Prior to the amendment introduced by Act No. 29 of 2023, section 18(1) permitted applications for the deletion of parties to be made “*on or before the hearing*”. By Act No. 29 of 2023, that temporal limit was curtailed to read “*on or before the day first fixed for the pre-trial conference*”.

Following the amendment introduced by Act No. 29 of 2023, section 18(1) reads as follows:

18(1) The court may, on or before the day first fixed for the pre-trial conference, upon the application of either party and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out; and the court may at any time, either upon or without such application and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, 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 action, be added.

Applications under section 18(1) may broadly be considered in two stages:

- (a) applications made on or before the day first fixed for the pre-trial conference; and
- (b) applications made at any time of the action.

Before the day first fixed for the pre-trial conference, the Court may, upon an application made by either party, but not on its own motion, strike out the name of any party who has been improperly joined.

The Court may, at any time, either upon an application of either party or on its own motion, order the transposition of parties or the addition of parties.

In relation to the addition of parties, section 18(1) contemplates two distinct categories of persons. In the language of the section itself:

- (a) “the name of any person who ought to have been joined, whether as plaintiff or defendant”; and
- (b) “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 action.”

A party to an action is a person formally joined to the action as plaintiff or defendant. A party may either be a necessary party or a proper party.

Persons falling within category (a) above are necessary parties. A necessary party is a person against whom relief is sought, whether directly or indirectly, in the prayer to the pleadings or by way of issues, or a person without whose presence no effective adjudication of the matter is possible.

Persons falling within category (b) above are proper parties. A proper party, on the other hand, is a person against whom no relief is claimed but whose presence before Court is necessary to enable it to effectually and completely adjudicate upon and settle all the questions involved in the action.

When section 18(1) is read in isolation, both categories of persons appear to be amenable to addition as parties at any stage of the action. However, that position does not hold when section 18(1) is read in conjunction with, *inter alia*, sections 21, 22 and 93(2) of the Civil Procedure Code.

The addition, deletion or transposition of parties almost invariably necessitates an amendment to the pleadings. Section 21 of the Civil Procedure Code expressly provides that where a defendant is added, the plaint shall, unless the Court directs otherwise, be amended accordingly and served on the new defendant as well as on the original defendants.

Section 22 provides that all objections for want of parties, for the joinder of parties who have no interest in the action, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity and, in any event, before the day first fixed for the pre-trial conference. Any such objection not so taken shall be deemed to have been waived by the defendant. Thus, although it is desirable that such objections be taken at the earliest possible opportunity after summons is received, the outer limit prescribed by the statute is the day first fixed for the pre-trial conference. Within that period such objections may properly be taken. An objection for want of parties bears a direct relationship to the addition of parties. This, in turn, indicates that the addition of parties ought ordinarily to be made before the pre-trial conference.

Following the amendments introduced by Act No. 9 of 1991 and Act No. 29 of 2023, section 93(2) expressly prohibits amendments to pleadings after the day first fixed for the pre-trial conference unless the Court is satisfied, for reasons to be recorded, that grave and irremediable injustice would result if the amendment is refused and that the applicant has not been guilty of laches. Both requirements must be satisfied before such an amendment can be permitted, and the Court is not entitled to take any other consideration into account in making that determination.

Section 93(2) reads as follows:

On or after the day first fixed for pre-trial conference of the action and before final judgment, no application for the amendment of any pleadings shall be allowed unless the Court is satisfied, for reasons to be recorded by the Court, that grave and irremediable injustice will be caused if such amendment is not permitted, and on no other ground, and that the party so applying has not been guilty of laches.

Apparent conflicts within a statute must be resolved by adopting a harmonious construction, a well-recognised principle of statutory interpretation. The doctrine of harmonious construction rests on the

premise that every provision of a statute is enacted with a definite purpose and should therefore be interpreted so as to give effect to all provisions as part of a cohesive whole.

Accordingly, although section 18(1), when read in isolation, appears to permit the addition of parties at any stage of the action, a harmonious reading of sections 18(1), 21, 22 and 93(2) makes it clear that such addition cannot be permitted on or after the day first fixed for the pre-trial conference unless it is established to the satisfaction of the Court that grave and irremediable injustice will be caused if such addition is not permitted and that the party so applying has not been guilty of laches.

Joinder, misjoinder and non-joinder of parties

Section 11 of the Civil Procedure Code permits all persons to be joined as plaintiffs in whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. Judgment may be entered in favour of such plaintiff or plaintiffs as are found entitled to relief, without amendment of the plaint.

Section 14, in turn, governs the joinder of defendants. It provides that all persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. Judgment may be entered against such defendant or defendants as are found liable according to their respective liabilities, without amendment.

Section 5 of the Code defines the cause of action as the wrong for the prevention or redress of which an action may be brought.

It is important to bear in mind that misjoinder or non-joinder of parties does not, *per se*, defeat an action. The Court is required to adjudicate upon and determine the rights of the parties who are actually before it. A judgment binds only the parties to the action and their privies, and not

the world at large, unless the proceeding is one *in rem*, such as a partition action.

Section 17 of the Civil Procedure Code provides:

17. No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

If the consent of anyone who ought to be joined as a plaintiff cannot be obtained, he may be made a defendant, the reasons therefore being stated in the plaint.

The foregoing provision must be understood subject to sections 33 to 38 of the Civil Procedure Code, which fall under Chapter VI. The cumulative effect of those sections is to ensure that parties place before Court their entire claim arising from a cause of action so as to prevent further litigation concerning the same subject matter. However, that objective shall not be pursued in a manner that causes prejudice to the opposite party. The indiscriminate combination of distinct and unrelated causes of action, even as between the same parties, may unnecessarily complicate the trial.

33. Every regular action shall, as far as practicable be so framed as to afford ground for a final decision upon the subjects in dispute so to prevent further litigation concerning them.

34(1) Every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any court.

(2) If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the court obtained before the hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

(3) For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

According to section 35(1), in an action for the recovery of immovable property or for a declaration of title thereto, no other claim or cause of action may be joined except those expressly permitted, namely claims for mesne profits or arrears of rent, damages arising from breach of a contract relating to the property or from the trespass constituting the cause of action, and claims by a mortgagee to enforce his remedies under the mortgage. Any other claim may be joined only with the leave of court.

Section 36(1) permits a plaintiff to unite several causes of action against the same defendant or defendants in one action, and similarly allows plaintiffs jointly interested in causes of action against the same defendant or defendants to combine them in a single action. However, if the Court considers that such causes of action cannot be conveniently tried together, it may order separate trials or make other appropriate orders for their separate disposal.

Section 37 is to similar effect. It enables a defendant, who alleges that the plaintiff has improperly united causes of action that cannot conveniently be disposed of in one action, to apply before the hearing for an order confining the action to such causes as may properly be tried together.

While section 36 recognises the plaintiff's right to unite several causes of action against the same defendant, it simultaneously preserves the Court's control over the conduct of proceedings. Section 38(1) further supplements that control by empowering the Court, in an appropriate case, to exclude any such cause of action altogether and to direct the amendment of the plaint where joinder would render the disposal of the action inconvenient.

Taken together, these provisions underscore the policy of the Civil Procedure Code of avoiding multiplicity of actions. However, in furtherance of that objective, the Court shall not encourage misjoinder of parties or causes of action, nor convert proceedings into unwieldy and unmanageable litigation by the indiscriminate addition of parties. The discretion vested in Court under section 18 shall therefore be exercised cautiously and in accordance with the settled principles of law.

Wider construction

The English authorities discussed below arose under Order XVI, Rule 11 of the Rules of the Supreme Court made pursuant to the Judicature Acts of England. The language of that Rule is materially similar to the provision in section 18(1) of our Civil Procedure Code which empowers the Court to add a person 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 action. For that reason, our Courts have frequently relied upon those English decisions as persuasive authority when interpreting section 18. Order XVI, Rule 11 provided as follows:

No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the

court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, 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 cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

In construing that provision, two competing approaches emerged in the English Courts, namely, a narrow construction and a wider construction.

In *Norris v. Beazley* (1877) 2 C.P.D. 80 at 84, Lord Coleridge C.J., with whom Denman J. and Grove J. agreed, adopted the narrower construction and stated:

[T]he defendant to be added must be a defendant against whom the plaintiff has some cause of complaint, which ought to be determined in the action, and that it was never intended to apply where the person to be added as defendant is a person against whom the plaintiff has no claim and does not desire to prosecute any. It seems to me that this application is answered, and that it was not intended that persons in the position of this company should be added as defendants, merely for the convenience of another defendant between whom and the company there may be questions which will afterwards have to be settled. It seems to me that it is the more important to construe this rule strictly, because it is obvious that in many cases, if the defendant's contention is right, its provisions

might be made use of in a manner exceedingly harassing to plaintiffs, by forcing them to include in their actions persons against whom they do not seek to proceed, and to mix up their rights as against one person, with questions of a highly complicated nature arising between themselves and others.

In contrast, in *Byrne v. Brown and Diplock* (1889) 22 Q.B.D. 657 at 666, Lord Esher M.R., delivering the judgment of the Court of Appeal, adopted a wider construction and observed:

One of the chief objects of the Judicature Act was to secure that, whenever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same; it is sufficient if the main evidence, and the main inquiry will be the same, and the Court then has power to bring in the new parties, and to adjudicate in one proceeding upon the rights of all the parties before it. Another great object was to diminish the cost of litigation. That being so, the Court ought to give the largest construction to those Acts in order to carry out as far as possible the two objects I have mentioned.

In the decision of the Court of Appeal in *Moser v. Marsden* [1892] 1 Ch. 487, Lindley L.J. with whose judgment Kay L.J. concurred, decided in favour of narrower construction of the Rule.

However, in *Montgomery v. Foy, Morgan & Co.* [1895] 2 Q.B. 321, Lord Esher M.R. reaffirmed the wider approach articulated in *Byrne v. Brown and Diplock*. In the course of the judgment, he referred to *Norris v. Beazley* and stated at page 325:

With regard to the case of Norris v. Beasley, it is to be observed that it was decided at an early stage of the decisions with regard to the meaning of the Judicature Acts, and, though I do not say that the actual decision was wrong, I do not think that all the statements made in the judgments could now be supported.

After analysing the Rule and the earlier authorities in considerable detail, Devlin J., in *Amon v. Raphael Tuck & Sons Ltd.* [1956] 1 All ER 273 at 290, clarified that if a plaintiff could show that he could not obtain effectual and complete relief unless the new party was joined, or if a defendant could show that he could not effectually set up a defence which he desired to advance unless the new party was joined, then the addition should be allowed. He observed:

It must not be supposed that the test which I have employed can be applied to every sort of application under the rule, and I am not attempting to lay down, or holding that the authorities lay down, a test of universal efficacy. A plaintiff may in the first instance join as a defendant any person "against whom the right to any relief is alleged to exist" (Ord. 16, r.4). If, after he has issued his writ, he wants to join another defendant, no doubt he will have to proceed under r.11, but he will not have to show that the new defendant will be directly affected by an order in the action as it is then constituted: what he generally shows is that he cannot get effectually and completely the relief for which he asks unless the new defendant is joined, and that, in that sense, the new defendant is a necessary party to the action. Likewise, a defendant who seeks to join another defendant does not inevitably have to show that the new defendant will be directly affected by an order in the action as it is constituted. He may succeed if he can show that he cannot effectually set up a defence which he desires to set up unless the new defendant is joined, or unless the order made binds the new defendant. It is not that the construction of the rule differs according to circumstances. The construction of the rule is, and must be, the same in all

circumstances; but the test that is appropriate to determine whether a party is necessary may vary according to the circumstances.

Thus, the governing principle remained whether the presence of the proposed party was necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the action.

However, Devlin J. narrowed the wider interpretation in two respects. First, he analysed several English authorities in which the addition of parties had been allowed, and observed that the operative consideration in those cases appeared to be the prevention of multiplicity of actions but it should not be the predominant consideration in deciding whether or not a party be added. He stated at page 285:

If I may express with diffidence my own view of the rule, apart from the authorities, I would support the narrower construction. I do not, with deference to those who have thought otherwise, agree that the main object of the rule is to prevent multiplicity of actions, though it may incidentally have that effect.

Accordingly, Devlin J. cautioned that the prevention of multiplicity of proceedings should not displace the true purpose of the Rule, which is to identify the parties necessary for the proper determination of the existing action.

Secondly, Devlin J. drew a distinction between a party having a legal interest and one having merely a commercial interest in the subject matter of the action, confining addition to those with a direct or legal interest. He stated at page 287:

The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled therefore must be a question in the action which cannot be effectually and completely settled unless he

is a party. On the wider construction of the rule, I do not understand where the line is to be drawn between a commercial interest in the question involved in the case and a legal one... It is not enough that the intervener should be commercially or indirectly interested in the answer to the question; he must be directly or legally interested in the answer.

The oft-quoted local authority resisting the addition of parties is *The Chartered Bank v. L. N. De Silva* (1964) 67 NLR 135, where this Court endorsed both of the above restrictions and held at page 142 that “*the principle laid down in Amon’s case and followed in the later decisions should be preferred to the broad generalisation of Lord Esher in Montgomery’s case.*”

However, after *Amon*, Denning M.R. and Diplock L.J., in *Gurtner v. Circuit* [1967] 2 Q.B. 587, adopted a more flexible approach and recognised that, in appropriate circumstances, a person with a sufficient commercial interest in the subject matter of the litigation could properly be joined as a party.

Accordingly, the second restriction imposed by Devlin J. in *Amon*, namely that only a person with a direct legal interest may be joined and that a commercial interest would not suffice, can no longer be regarded as fully reflective of the modern English position.

The current position in England and Wales is governed by the Civil Procedure Rules in 1998, in particular CPR Part 19, which came into force on 26 April 1999, following the Woolf reforms.

19.1 Any number of claimants or defendants may be joined as parties to a claim.

19.2

(1) This rule applies where a party is to be added or substituted except where the case falls within rule 19.6 (special provisions about changing parties after the end of a relevant limitation period).

(2) The court may order a person to be added as a new party if –

(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or

(b) there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.

(3) The court may order any person to cease to be a party if it is not desirable for that person to be a party to the proceedings.

(4) The court may order a new party to be substituted for an existing one if –

(a) the existing party's interest or liability has passed to the new party;

(b) it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings.

Rule 19.2(2) provides that the Court may order a person to be added as a new party if (a) “*it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings*”; or (b) “*there is an issue involving the new party and an existing party which is connected to the matters in dispute in the proceedings, and it is desirable to add the new party so that the court can resolve that issue.*”

The Court may likewise order that a party cease to be a party if it is not desirable for that person to remain, and may substitute a new party where the existing party's interest or liability has passed, or where substitution is desirable to enable proper resolution of the dispute.

The language of CPR 19.2 unmistakably reflects a broader and purposive approach. The operative test is whether it is “desirable” to add the party in order to resolve the matters in dispute effectively. The focus is not confined to whether the plaintiff has a direct cause of action against the proposed party, but whether the presence of that party will enable the Court to resolve all connected issues in a single proceeding.

In that respect, the modern English rule aligns more closely with the broader construction articulated in *Byrne v. Brown and Diplock* and in *Gurtner v. Circuit*, rather than with the restrictive approach adopted in *Norris v. Beazley*. Even *Amon v. Raphael Tuck & Sons Ltd*, on a closer analysis of that case, has not invalidated this broader construction.

This historical development was analysed in the leading decision of *Arumugam Coomaraswamy v. Andiris Appuhamy* [1985] 2 Sri LR 219, where Ranasinghe J. (as he then was), with the concurrence of Sharvananda C.J. and Atukorale J., preferred the wider construction of section 18(1) of the Civil Procedure Code.

In deciding whether the addition of a new party should be allowed under section 18(1) of the Civil Procedure Code the wider construction adopted by English Courts is to be preferred. Whenever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that other actions may be brought in respect of that transaction the Court has the power to bring all the parties before it and determine the rights of all in one proceeding. It is not necessary that the evidence on issues raised by the new parties being brought in should be exactly the same. It is sufficient if the main evidence and the main inquiry will be the same. Even if the narrower construction is adopted a person who has to be bound by the result of the action, or has a legal right enforceable by him against one of the parties to the action which will be affected by the result of the action should be joined; so also where the question raised by the party seeking to be added is so inextricably

mixed with the matters in dispute as to be inseparable from them and the action itself cannot be decided without deciding it, then the addition should be made; if the plaintiff can show that he cannot get effectual and complete relief unless the new party is joined or a defendant can show that he cannot effectually set up a defence which he desires to set up unless the new party is joined, the addition should be allowed.

In *Hilda Enid Perera v. Somawathie Lokuge* [2000] 3 Sri LR 200 at 206, Bandaranayake J. (as she then was) followed *Arumugam Coomaraswamy*:

In order to avoid multiplicity of actions and to diminish the cost of litigation as pointed out by Ranasinghe, J., in Arumugam Coomaraswamy's case (Supra), and for the effective and complete adjudication and settlement of all questions involved in this case, the learned Trial Judge was correct when he made the order to add the 2nd respondent as a party defendant.

As held in *Susil Perera v. Kelly* [2002] 3 Sri LR 163 at 168:

The objective in adding a party to an action is to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the action and not necessarily to claim relief against him. The fact that no relief has been claimed against the petitioner does not entitle the petitioner to a discharge from the proceedings if his presence is necessary for the effectual determination of all the issues involved in the case.

It is to be noted that the aforesaid cases, contrary to the restriction to the wider interpretation set down by *Amon*, have favored the prevention of multiplicity of actions as an operative ground for addition of parties.

The Indian position is governed by Order I Rule 10(2) of the Code of Civil Procedure, 1908, which is *in pari materia* with section 18(1) of our Civil Procedure Code. Order I Rule 10(2) provides as follows:

The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, 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.

The Indian courts, much like the Courts in England, have consistently adopted a wider and purposive construction of the provision relating to the addition of parties.

As regards Indian position, Sarker's *The Code of Civil Procedure*, Vol I, 11th Edition, LexisNexis, 2011, page 916 states:

Useful guidance in the case of addition of parties: (1) If, for adjudication of the real controversy between the parties on record, the presence of a third party is necessary, then he can be impleaded; (2) It is imperative to note that by such impleading of the proposed party, all controversies arising in the suit and all issues arising thereunder may be finally determined and set at rest, thereby avoiding multiplicity of suits over a subject matter, which could still have been decided in the pending suit itself; (3) The proposed party has a defined, subsisting, direct and substantive interest in the litigation, which interest is either legal or equitable and which right is cognisable in law; (4) Meticulous care should be taken to avoid the adding of a party if it is intended merely as a ruse to ventilate certain other grievances of one or the other of the parties on record, which is neither necessary or expedient to be considered

by the court in the pending litigation; (5) It should always be remembered that considerable prejudice would be caused to the opposite party when irrelevant matters are allowed to be considered by courts by adding a new party whose interest has no nexus to the subject matter of the suit.

I am in respectful agreement with the wider construction of section 18 of the Civil Procedure Code, so as to ensure that matters inextricably connected with the main controversy are adjudicated in the same proceeding and that finality in litigation is achieved, while safeguarding procedural fairness and preventing prejudice to the parties.

Conclusion

In determining an application for the addition of parties under section 18(1) of the Civil Procedure Code, a wider and purposive construction must be preferred to a narrow and restrictive approach.

Section 18(1) contemplates two distinct categories of persons: first, those who ought to have been joined as parties, whether as plaintiff or defendant; and second, those whose presence before Court is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action. Both categories are amenable to addition provided the application is made on or before the day first fixed for the pre-trial conference of the case. If the application is made after the day first fixed for the pre-trial conference, the Court may allow the application only if it is fully satisfied that grave and irreparable injustice will be caused if such addition is not allowed and that the party so applying has not been guilty of laches, as the addition of parties necessarily entails amendment of pleadings.

In the instant case, the defendant made the application for addition before the day first fixed for the pre-trial conference. I am satisfied that the power of attorney holder sought to be added by the defendant is both a necessary party and a proper party. He is a necessary party because

reliefs are sought against him by way of issues. In any event, he is also a proper party, as his presence before Court is required to enable the Court effectually and completely to adjudicate upon and settle the questions involved in the action.

Accordingly, I answer the two questions of law on which leave to appeal was granted in the affirmative and allow the appeal.

The power of attorney holder shall be added as a party to the action. If learned counsel for the plaintiff does not wish to add him as an added plaintiff, learned President's Counsel for the defendant may add him as an added defendant. Consequential steps shall thereafter be taken in accordance with law.

The defendant-appellant is entitled to costs in all three Courts, recoverable from the plaintiff and the added party who resisted the application for addition in all three Courts.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera J.

I agree.

Judge of the Supreme Court