Gopi Chand
v.
The Delhi Administration

Gajendragadkar, J.

the appellant hereafter should be commenced without delay and should be disposed of as expeditiously as possible.

B.R.T.

FULL BENCH

Before S. S. Dulat, K. L. Gosain and A. N. Grover, JJ.

NOTIFIED AREA COMMITTEE BURIA, TEHSIL JAGADHRI THROUGH ITS PRESIDENT,—
Appellant

versus

GOBIND RAM AND OTHERS,—*Respondents*

Regular Second Appeal No. 98 of 1953 (Pending).

1959

Jan., 28th

Code of Civil Procedure (V of 1908)—Order 1 Rule 10, Order 41 Rule 20 and Sections 107 and 151—Party to the original suit not impleaded in appeal within the period of limitation—Whether can be added as a party later on.

Held—

(1) that if a party to the original proceedings is not impleaded in appeal on account of a *bona fide* and honest mistake on the part of the appellant, the appellate Court has ample powers under Order XLI rule 20, Civil Procedure Code, to allow the mistake to be rectified and the party to be added;

(2) that section 107(2) read with Order 1, rule 10, Civil Procedure Code, enables the appellate Court to add parties in appeals in suitable cases, but this power must be exercised within the period of limitation; and

(3) that apart from the provisions of Order XLI, rule 20, Civil Procedure Code, the appellate

Court has inherent powers to permit parties to be added to appeals in suitable cases and the language of rule 20 of Order XLI is not exclusive or exhaustive so as to deprive the appellate Court of its inherent powers in this respect.

Case law reviewed.

Case referred by Hon'ble Mr. Justice K. L. Gosain on 20th February, 1958 to Full Bench for decision of the legal questions of law involved in the case and on 28th January, 1959 the case was sent back to Hon'ble Single Judge, for decision.

H. L. SIBAL with D. S. TIWATIA, for Appellant.

B. R. TULI, SHAMAIR CHAND and G. C. MITAL, for Respondents.

JUDGMENT

GOSAIN, J.—In order to appreciate the true nature and import of the question of law raised in this case, it is necessary to state the relevant facts. Gosain, J.

Six persons—Gobind Ram, Babu Sumer Chand, Gajinder Parshad, Miri Mal, Prakash Chand and Raghunath Das—brought the present suit under the provisions of Order 1, rule 8, Civil Procedure Code, for perpetual injunction restraining the Notified Area Committee, Buria, from imposing and levying house-tax on the plaintiffs and other inhabitants of Buria Town in the district of Ambala. On an application made to the trial Court the aforesaid six persons were allowed to represent the inhabitants of the whole town. In their plaint they alleged that the imposition of the house-tax by the Notified Area Committee, Buria, was illegal, *ultra vires,* and arbitrary, and prayed for a permanent injunction restraining the Committee from imposing and realising the said house-tax. The suit was contested by the Committee who pleaded that they had the right to levy the tax in question and that the imposition and levy,

Notified Area Committee, Buria, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

thereof, was in no way illegal or *ultra vires*. On 28th May, 1952, the trial Court decreed the plaintiffs' suit leaving the parties to bear their own costs. In appeal the said decree was confirmed by the learned Senior Subordinate Judge, Ambala, on 30th October, 1952, and the defendant Committee has now come up in second appeal to this Court.

It appears that in the certified copy of the judgment of the Lower Appellate Court supplied to the Committee, the name of Prakash Chand plaintiff was not mentioned in the array of parties and presumably on account of the said mistake the name of Prakash Chand was not mentioned as a party in the memo of appeal filed in this Court.

At the hearing of the appeal a preliminary objection was taken by the respondents that the appeal was not properly constituted because Prakash Chand, plaintiff, who was a necessary party to the same, had not been impleaded as such. The contention was that the trial Court had given permission jointly to six persons to sue in a representative capacity and that the decree in the Courts below had been passed in favour of the six persons as also in favour of the other inhabitants of the notified area of Buria who were represented by these six persons. It was urged that five of them could not properly represent the inhabitants of the town of Buria because the trial Court had expressly granted permission jointly to six persons and the terms of the said permission had never been varied by any subsequent order of the trial Court. Reliance was placed on *Girdhari* v. *Ram Kala* (1), where it was held :—

> "Where permission is granted to certain persons under Order 1, Rule 8, Civil Procedure Code, to conduct the suit on behalf

(1) A.I.R. 1937 Lah. 601

withdraws, it is for the Court to decide of proprietary body and one of them whether it will permit the remaining plaintiff or plaintiffs to whom the general sanction has been given, to continue to prosecute the suit, or whether it will insist upon the original number, in which case it should notify to the members of the proprietary body to ask them so that they may authorise another person to conduct the case on their behalf as a co-plaintiff."

Reliance was also placed on *Venkatakrishna Reddy and others* v. *Srinivasachariar and others* (1), which was followed in the above-mentioned Lahore case.

The learned counsel for the appellant submitted in reply that the name of Prakash Chand had been left over on account of a *bona fide* mistake which occurred due to the fact that an incorrect copy of the judgment was supplied to his client and the mistake being on the part of the Court or its officers, his client should not be prejudiced and made to suffer by the same. He further urged that the suit was a representative one and that each of the six persons represented all other inhabitants of Buria Town and in a case of this type it did not at all matter that one of the six persons had not been impleaded as a party to the appeal. The contention of the learned counsel for the appellant in other words, was that Prakash Chand must be deemed to be represented by the other five persons and it cannot be said that his intersts in the appeal were not properly safeguarded. It was vehemently urged that the present was not a case in which it could be said that

(1) A.I.R. 1931 Mad. 452

Notified Area Committee, Buria, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

Prakash Chand was not "interested in the result of the appeal" and, therefore, it was a fit case in which Prakash Chand should be added as a party either under the provisions of Order XLI rule 20. Civil Procedure Code, or under the provisions of Order 1, Rule 10, read with section 107, Civil Procedure Code, or under the inherent powers of the Court saved by section 151, Civil Procedure Code. The learned counsel for the appellant also filed an application under Order XLI, Rule 20, read with section 151, Civil Procedure Code, seeking permission to add the name of Prakash Chand as a respondent in the memo of parties.

The aforesaid application was opposed by the respondents who contended that Prakash Chand was no longer interested in the result of the appeal and could not be added as a party at this stage when the period of limitation prescribed for filing an appeal against the decree in question had already run out. The learned counsel for the respondents relied for this proposition on cases reported as *Labhu Ram* v. *Ram Pratap* (1), *Rattan Lal Chawla* v. *John Vasica* (2), *Jagan Singh and another* v. *Mt. Panni and others* (3), and *V.P.R.V. Chokalingam Chetty* v. *Seethai Ache and others* (4), The decision of the first three cases mentioned above was chiefly based on the view taken by their Lordships of the Privy Council in *V.P.R.V. Chokalingam Chetty* v. *Seethai Ache and others* (4).

The learned counsel for the appellant urged in reply that the case reported in *V.P.R.V. Chokalingam Chetty* v. *Seethai Ache and others* (4), was

(1) I.L.R. 26 Lah. 18 (F.B.)
(2) A.I.R. 1950 E.P. 355
(3) A.I.R. 1954 Punj. 20
(4) I.L.R. 6 Rang. 29

decided by their Lordships of the Privy Council on its own peculiar facts and that their Lordships did not either intended to or actually lay down any rigid rule that a party to the original suit, who has not been impleaded in appeal within the period prescribed for filing the same, can never be deemed to be one "interested in the result of the appeal" and can never be added in appeal as a party either under the provisions of Order XLI, Rule 20, Civil Procedure Code, or under other provisions of the Civil Procedure Code, or under the inherent powers of the Court. It was urged that the view taken by the Full Bench of the Lahore High Court in *Labhu Ram* v. *Ram Pratap* (1), and that taken by this Court in *Rattan Lal Chawla* v. *John Vasica* (2), *and Jagan Singh and another* v. *Mt. Panni and others* (3), required re-examination as the same was not a correct one. In support of his contention the learned counsel for the appellant relied on the following cases in almost all of which parties were allowed to be added in appeal either under the provisions of Order XLI, Rule 20, Civil Procedure Code, or under the inherent powers of the Court :—

(1) *Keshorao* v. *Yeshwantrao,* (4) ;

(2) *Alabhai Vajsurbhai* v. *Bhura Bhaya* (5);

(3) *Jangir Singh, etc.* v. *Mit Singh, etc.* (6);

(4) *Kunhanna Bai and another* v. *Manakke and others* (7) ;

(5) *Maruti Gopalarao* v. *Khushalrao Narayanrao and others* (8) ;

(1) I.L.R. 26 Lah. 18 (F.B.)
(2) A.I.R. 1950 E.P. 355
(3) A.I.R. 1954 Punj. 20
(4) A.I.R. 1957 M.B. 17
(5) A.I.R. 1937 Bom. 401
(6) A.I.R. 1955 Pepsu 62
(7) A.I.R. 1929 Mad. 343
(8) A.I.R. 1951 Nag. 415

Notified Area Committee, Buria, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

(6) *Shanti Lal and others* v. *Hiralal Sheonarain and others* (1) ;

(7) *United Provinces* v. *Mt. Atiqa Begum and others* (2) ;

(8) *Bishna and others* v. *Sucha Singh* (3) ;

(9) *Moti Ram Prem Chand and another* v. *Kewal Ram Dharam Chand and others* (4) ;

(10) *Swaminatha Odayar* v. *T. S. Gopalaswami Odayar and others* (5).

In view of the important nature of the question of law and because of the fact that this question arises frequently in a number of cases, I thought it fit to refer the same to a larger Bench.

The point that falls for decision is as follows:—

Whether a party to the original suit who has not been impleaded in appeal within the period of limitation prescribed for filing the same can be added as a party to the appeal either under the provisions of Order XLI, Rule 20, Civil Procedure Code, or those of Order I, Rule 10, Civil Procedure Code, read with section 107, Civil Procedure Code, or under the inherent powers of the Court saved by section 151, Civil Procedure Code ?

Now, Order XLI, Rule 20 reads as under :—

"Where it appears to the Court at the hearing that any person who was a party to

(1) I.L.R. 23 Lah. 603
(2) A.I.R. 1941 F.C. 16
(3) A.I.R. 1934 Lah. 402
(4) A.I.R. 1928 Lah. 202
(5) A.I.R. 1937 Mad. 741

the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent."

So far as this provision goes, the controversy between the parties really rests on the interpretation of the words "interested in the result of the appeal" as used in this provision. The learned counsel for the respondents contends that their Lordships of the Privy Council have in *V. P. R. V. Chokalingam Chetty* v. *Seethai Ache and others* (1), given an inflexible interpretation of these words and that the view taken in the said case has been consistently followed by almost all the High Courts in a large number of cases. Basing himself on the above-mentioned case the learned counsel contends that if a person was a party to the original suit and a decree was passed in his favour along with others and he has not been impleaded in the appeal against the decree within the period of the limitation prescribed for filing of the same, he can never be deemed to be a person interested in the result of the appeal, and the provisions of Order XLI rule 20, Civil Procedure Code, cannot be made use of for the purposes of adding him as a party to the appeal. The contention is that it does not at all matter whether he was deliberately not added as a party in appeal or was not so added on account of an error or a mistake howsoever *bona fide* or honest it may be.

On behalf of the appellant it is urged that their Lordships of the Privy Council decided the

(1) I.L.R. 6 Rang. 29

Notified Area Committee, Buria, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

case reported as *V. P. R. V. Chokalingam Chatty* v. *Seethai Acha and others* (1), on its own peculiar facts and did not lay down any rigid rule of the type contended for. It is contended that it will depend on the facts and circumstances of each case whether the party sought to be added to the appeal can be deemed to be one interested in the result of the appeal. In support of the above proposition of law the learned counsel for the appellant relies on a large number of cases most of which have already been mentioned in the reference order.

For a proper appreciation of the *ratio decidendi* of the judgment of their Lordships of the Privy Council in *V. P.R.V. Chokalingam Chetty* v. *Seethai Ache and others* (1), it is necessary to give the facts of that case in some details and they are as under :—Some landed property in Burma had been acquired by a joint Hindu family of N.C., a money-lending community. In 1908, K.P., a youngerman who had recently succeeded his father as managing member of the family, finding that the Burma agency was in difficulties, got the other members of the joint family to join with him in executing a deed of trust by which they transferred the properties mentioned in the schedule to the deed to a trustee for the benefit of their creditors. The trustee was empowered, amongst other things, to sell the scheduled properties and invest purchasers with full proprietary rights therein, but was to act in certain matters with the consent of another person described in the deed as a "coadjutor". In 1911 the first defendant's firm who held two decrees against the K.P. firm for over Rs. 72,000 were pressing for payment, and it was arranged that certain properties in the Pegu District, included in the trusts deed, should be transferred to them in satisfacion of heir claim. A deed of

(1) I.L.R. 6 Rang. 29

transfer mas accordingly executed on the 1st December, 1911, in Burma by the duly authorised agents of the trustee under the deed, and K. P., the managing member of the family. Satisfaction was duly entered up and the first defendant took and remained in possession without any question being raised by anyone until some six years later the plaintiff in that case, V.P.R.V., a member of the same community as the K.P. family, who was employed in Rangoon as the agent of another firm, obtained a transfer from the Bank of Bengal of a decree against the K.P. firm for Rs. 90,000 in consideration of a payment of Rs. 2,500 only. In execution of the said decree he proceeded to attach, as the property of the judgment-debtors, the lands which had been conveyed and were in possession of the first defendant. Finding, however, that the attachment proceedings must prove infructuous owing to the fact that the two senior members of the K.P. family had been adjudged insolvent on their own petition in January, 1918 in the Court of the District Judge, of Ramanand at Madura, the plaintiff went over from Burma to Madura, and on the 19th October, 1911, presented a petition to the Official Assignee at Madura, alleging that the properties mentioned in a list annexed to the petition, containing some 75 items, had either been sold *benami* for the benefit of the insolvent or obtained in the name of his agent or agents with the same object and praying that they should be sold by public auction, as there were numerous persons prepared to bid, and in case no one appeared the petitioner was prepared to purchase them himself. In December, 1919, the Official Assignee advertised the properties for sale as being part of the insolvent's estate, and on the 26th January, 1920, there being no other bidders, the plaintiff became the purchaser for Rs. 580 of lands which he stated

Notified Area Committee, Buria, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

in his evidence to be worth three lakhs of rupees. The District Judge found that the plaintiff's allegation that the sales in question in these suits were *benami* for the K.P. family was made recklessly and without any foundation, and described his conduct in this matter as most astounding and repugnant. He also criticised thet Official Assignee for not making further inquiry as to whether the insolvents had properties in Burma in the names of their agents and inferred from the insignificant price which the Official Assignee accepted that he attached very little weight to the plaintiff's case that these valuable properties still formed part of the insolvent's estate. Their Lordships of the Privy Counsil agreed with the learned District Judge in this respect and found that the sales by the Official Assignee of the Lands in possession of the alienees from the insolvents were nothing more than sales of the right to litigate, and assuming that they did not come within the provisions of the Transfer of Property Act, they were open to the same objections and were strenuously to be deprecated. Their Lordships further found that "In the present case, as already pointed out, there was not even any corresponding advantage to the insolvent estate." Having obtained the transfer, the plaintiff proceeded to file two suits in the District Court of Pegu, which were tried together, against the first defendants and those claiming through him, in which he not only set up the *benami* character of the transactions, but also contended that the sale to the first defendant was invalid as not in accordance with the provisions of the trust deed. Both the plaints, proceeded on somewhat similar grounds and challenged the transfer made to the first defendant and by the first defendant to the second defendant and from the second to the third

and so on. The District Judge rejected all the plaintiff's contentions and dismissed both suits finding that the allegation that the sales were *benami* was made by the plaintiff "recklessly and without any foundation." The plaintiff filed appeals from these decrees to the High Court at Rangoon, but did not make the first and second defendants in the first suit or the first defendant in the second suit parties to the appeals. When the appeals came up for hearing before the High Court, a prayer was made that the first and second defendants in the first case and first defendant in the second case may be added as parties to the appeals. The learned Judges of the High Court stated in their judgment that the foundation of title of all the defendants was the sale deed to the first defendant; that the decrees of the lower Court declared the sale deed to be perfectly valid as between the plaintiff and the first defendant; that owing to the failure to make the first defendant a respondent, there was no appeal from this finding, which had consequently become *res judicata* as between the plaintiff and the first defendant, and must also be regarded as *res judicata* against the respondents, who claimed through the first defendant, or in other words as it was put by the learned Judges at the end of the judgment, the finding that the sale to the first defendant was good carried with it a finding that it was also good as between the plaintiff and the purchasers from the first defendant.

Their Lordships of the Privy Counsil in deciding the case observed as under:—

> "As regards the rest of the case, owing to the plaintiff's failure to make these defendants respondents within the time limited for filing an appeal, these appeals, so far as they are concerned, are *prima*

Notified Area Committee, Buria, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

facie barred by limitation, and they are entitled to hold the decrees in their favour, which, as pointed out by their Lordships in a very recent case, is a substantive right of a very valuable kind of which they should not lightly be deprived. When parties are added by the Court after the institution of a suit under Order 1, rule 10(2), section 22 of the Limitation Act provides that the date when they are added is to be deemed to be the date of the institution of the suit so far as they are concerned for purposes of limitation, and the rights which they may have acquired under the Limitation Act are, therefore, sufficiently safeguarded. The addition of a respondent whom the appellant has not made a party to the appeal is expressly dealt with in Order XLI rule 20, on which the plaintiff relied both in the appellate Court and before their Lordships. That rule empowers the Court to make such party a respondent when it appears to the Court that 'he is interested in the result of the appeal.' Giving these words their natural meaning—and they cannot be disregarded—it seems impossible to say that in this case the defendants against whom these suits have been dismissed, and as against whom the right of appeal has become barred, are interested in the result of the appeal filed by the plaintiff against the other defendants. It was for the plaintiff-appellant, who applied to the Court to exercise its powers under this rule, to show

what was the nature of their interest and this he had failed to do."

From the facts of the case and from the aforesaid observations made by their Lordships of the Privy Council it is quite clear that the first and second defendants in the first case and the first defendant in the second case were deliberately not added as parties to the appeals in question. There was no plea of any slip or omission or *bona fide* mistake. The appellants in those cases probably thought that the appeals should be filed only against the persons who were actually in possession of the properties in suit and deliberately did not file any appeal against the predecessors-in-interest of the said parties. This deliberate omission was interpreted both by the High Court and by their Lordships of the Privy Council to mean that the plaintiff-appellant in that case did not actually challenge the finding that the sale in favour of the first and second defendants was not a *benami* one and it was then found that the said finding operated as *res judicata* so far as the successors-in-interest of the aforesaid defendants were concerned. Their Lordships expressly stated towards the end of the observations quoted above that "it was for the plaintiff-appellant, who applied to the Court to exercise its powers under this rule to show what was the nature of their interest and this he has failed to do." The above observations show that the plaintiff in that particular case had failed to point out the interest which the parties sought to be added had in the appeals and that the decision of their Lordships in that particular case was based on the aforesaid fact. In any case, no prayer seems to have been made to their Lordships so far as the inherent powers of the Court saved by the provisions of section 151 are concerned, and no mention at all is made in

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

this judgment with regard to the exercise or otherwise of the said powers. Allegations of the plaintiff in that case had been held to be reckless and without any foundation, and the conduct of the Official Assignee as also of the plaintiffs had been found to be not above board. It was probably not a case in which the Courts would have exercised their inherent powers in favour of the plaintiff-appellant.

I am definitely of the opinion that their Lordships of the Privy Council did not intend to or lay down any rigid rule of the type as envisaged by the Full Bench of the Lahore High Court in *Labhu Ram* v. *Ram Pratap* (1), and in other cases taking a similar view. I am fortified in this view by the ruling reported in *Darbar Shri Khachar Alabhai Vajsurbhai* v. *Khachar Bhura Bhaya and others* (2), *Swaminatha Odayar* v. *T. S. Gopalaswami Odayar and sixteen others* (3), *Kunhanna Rai and another* v. *Manakke and others* (4), *Keshorao* v. *Yeshwantrao* (5), *Jangir Singh and others* v. *Mit Singh and others* (6), and *Munshi Ram* v. *Abdul Aziz* (7).

In *Darbar Shri Khachar Alabhai Vajsurbhai* v. *Khachar Bhura Bhaya and athers* (2), Wassoodev, J., who wrote the main judgment of the Division Bench observed as follows at page 617 of the report :—

> "We were referred in the course of the arguments to a decision of the Privy Council in *Chokalingam Chetty* v.

(1) I.L.R. 26 Lah. 18 (F.B.)
(2) I.L.R. 1937 Bom. 602
(3) I.L.R. 1938 Mad. 52
(4) A.I.R. 1929 Mad. 343
(5) A.I.R. 1957 M.B. 17
(6) A.I.R. 1955 Pepsu 62
(7) A.I.R. 1943 Lah. 252

Seethai Acha (1), in support of the view that no person who is a party to the proceedings in the original Court can be added as a respondent if the time to appeal against him has expired. The assumption that that decision lays down an inflexible rule of interpretation of the expression 'interested in the result of the appeal' in Order XLI, Rule 20, is erroneous."

After quoting the relevant portion from the judgment of the Privy Council the learned Judges further observed :—

"Those remarks imply that the question whether the interest of the respondents proposed to be added still survives in the appeal must depend on the nature of the litigation, the decree passed, the subject-matter of the appeal, and the effect of the decision in appeal in their absence."

In *Swaminatha Odayar* v. *T. S. Gopalaswami Odayar and sixteen others* (2), Venkatasubba Rao who delivered the judgment of the Division Bench observed as follows at page 57 of the report :—

"Mr. Venkatarama Sastri broadly argues, relying upon the decision of the Judicial Committee in *V.P.R.V. Chokalingam Chetty* v. *Seethai Acha and others* (1), that no person, against whom the right of appeal has become barred, can ever be added as a respondent under this provision. We are unable to agree that

(1) I.L.R. 6 Rang. 29
(2) I.L.R. 1938 Mad. 52

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

this is the effect of the decision cited above."

The learned Judge then dealt with the facts of the Privy Council case and in respect of the same observed as follows at page 59 of the report :—

"Supposing the appeal had gone on, and as a result the sale in favour of the second defendant, Singaram Chetty, had been set aside by the appellate Court, how could it be said that the absent first defendant was 'interested in the result of the appeal' ? The decision of the High Court could not in the slightest degree affect the trial Court's finding (which had become *res judicata*), that as between the plaintiff and the first defendant the sale was perfectly valid. In that case, therefore, the first defendant had no possible interest in the result of the appeal ; it mattered little to him whether it succeeded or failed."

In *Kunhanna Rai and another* v. *Manakke and others* (1), it was observed as under :—

"Mr. Sitarama Rao who appears for the respondents strongly objects to the plaintiff No. 2 being made a party to the Letters Patent Appeal and he relies upon a recent decision of the Privy Council in *Chokalingam Chetty* v. *Seethai Acha* (2). In that case, their lordships held that the Court had no power to make a person a party who

(1) A.I.R. 1929 Mad. 343
(2) I.L.R. 6 Rang. 29

was not made a party to the appeal by the appellant, although he was a party to the proceedings in the Court below. In that case, the party sought to be brought on the record in appeal was left out by the appellant. It is only when he discovered that he would suffer by reason of that person not being made a party, he applied to the Court for his being made a party. The facts here are different. In this case, awing to an oversight of either the clerk or the person who instructed the vakil who filed the Letters Patent Appeal, the name of the plaintiff 2 who was respondent 14 in the second appeal was left out. * * * * *

We think, in these circumstances, that it was a *bona fide* mistake and this and to have the appeal memorandum Court has power to correct a mistake amended by inserting the proper party. We do not think that the decision of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seethai Acha* (1), in any way prevents us from giving relief when we find that owing to a similarity of names, a mistake was made in not making a person a party to the appeal."

In *Keshorao* v. *Yeshwantrao* (2), the Indore Bench of the Madhya Bharat Court agreed with the view taken in *Darbar Shri Khacher Alabhai Vajsurbhai* v. *Khacher Bhura Bhoya* (3), and with respect to the same observed as under :—

"In our opinion this view is more sound and reasonable than the Allahabad view,

(1) I.L.R. 6 Rang. 29
(2) A.I.R. 1957 M.B. 17
(3) I.L.R. 1937 Bomb. 602

Notified Area Committee, Buria, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

for, the Privy Council in their observations had added that 'it was for the plaintiff appellant, who applied to the Court to exercise its powers under this rule, to show what was the nature of their interest : and this he has failed to do.' The significance of this sentence in the context is obvious."

In *Jangir Singh and others* v. *Mit Singh and others* (1), Mehar Singh, J., who declivered the judgment on behalf of the Division Bench, observed in para 5 of the report as follows :—

> "*V.P.R.V. Chokalingam Chetty* v. *Seethai Ache and others* (2), was not a case of mistake but of a deliberate omission to add a defendant as a respondent." (It may be mentioned that the ruling reported in *V.P.R.V. Chokalingam Chetty* v. *Seethai Ache and others* (2), is the same as in *Chokalingam Chetty* v. *Seethai Acha* (3),

In *Munshi Ram* v. *Abdul Aziz* (4), Teja Singh, J., quoted the relevant passage from the judgment of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seethai Acha* (3), and with regard to the same observed as follows :—

> "These observations have been interpreted differently by different Courts. Some support the view taken by the District Judge. It was, however, held in *Swaminatha Odayar* v. *T. S. Gopalaswami Odayar and Sixteen*

(1) A.I.R. 1955 Pepsu 62
(2) A.I.R. 1927 P.C. 252
(3) I.L.R. 6 Rang. 29
(4) A.I.R. 1943 Lah. 252

others (1), that the Privy Council ruling cannot be taken as laying down that no person against whom the right of appeal has become barred can ever be added as a respondent under the provisions of Order 41, Rule 20. The opinion of the Bombay High Court as expressed in *Darbar Shri Khachar Alabhai Vajsurbhai* v. *Khachar Bhura Bhaya and others* (2), is that their Lordships of the Privy Council did not lay down any inflexible rule of interpretation of the expression 'interested in the result of the appeal' in Order XLI, Rule 20, and that the remarks of their Lordships imply that the question whether the interest of the respondents proposed to be added still survives in the appeal must depend on the nature of the litigation, the decree passed, the subject-matter of the appeal, and the effect of the decisions in appeal in their absence. With all deference this view appears to be the correct one."

A persual of the authorities referred to above leaves no doubt at all that the judgment of their Lordships of the Privy Council must be limited to the facts of that particular case and cannot be interpreted to lay down an inflexible rule of interpretation of the words "interested in the result of the appeal." I am aware of the fact that in some of the judgments which I shall discuss hereafter a view has been taken that their Lordships of the Privy Council have laid down a rigid rule that a party who has not been impleaded in appeal within the period of limitation can never be deemed to

(1) I.L.R. 1938 Mad. 52
(2) I.L.R. 1937 Bom. 602

Notified Area Committee, Burla, tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

be interested in the result of the appeal, but with great respect to the Judges who have taken that view I am unable to agree with the same.

If the interpretation of Order XLI, Rule 20, as contended for by the learned counsel for the respondents, is accepted, the obvious result will be that the rule will for all practical purposes remain a dead letter. It is difficult to conceive a case where the right of appeal does not become barred as against a party not impleaded by the time the appeal comes on for hearing, for, under the rule, the action is to be taken only at the hearing of the appeal.

There may be case of honest and *bona fide* mistake and an appellant who genuinely wishes to appeal against all the decree-holders in a joint decree may have omitted to mention one of them for causes for which he could not by any means be held responsible. He may have been, as in this case, supplied with wrong certified copies of judgment and decree of the trial Court which did not contain the name of one of the decree-holders, and acting on the faith of the same he may have framed a memorandum of appeal honestly omitting to mention the name of that party. The rigid interpretation sought to be placed on the rule must then stand in the way of the Courts in allowing the said decree-holders to be impleaded as a party and the obvious result of the same would be that the appellant will be deprived of justice for no fault of his. I am doubtful if the legislature ever intended such a course. In my opinion, the rule is an enabling one and was framed really to meet contingencies like the above and to enable the Court to do complete justice between the parties. It cannot be denied that all the rules of procedure are meant to serve only one purpose which is the administration of justice.

It is true that by the expiry of the period of limitation prescribed for filing an appeal, the respondent obtains some sort of right which in many cases has been termed as a valuable right. If, however, the appeal is filed beyond the period of limitation, or, in other words, after the acquisition by the respondent of the so-called valuable right, and the appellant succeeds in satisfying the Court that there was sufficient cause for not filing the appeal in time, the Court possesses ample powers for extending the period of limitation under section 5 of the Limitation Act, and once an order is passed on this point, the so-called valuable right immediately vanishes. By enacting Order XLI, Rule 20, Civil Procedure Code, the legislature, in my opinion, intended to empower the Court to allow a party to be added to an appeal already filed when, for reasons with which the Court is satisfied, the name of the said party was not mentioned in the original memorandum of appeal. The Court while adopting such a course will presumably determine whether there was a sufficient cause for not impleading the said party in time. Independently of this rule, there is nothing to prevent the appellant from withdrawing the appeal already filed by him and which suffers from the defect that one of the necessary parties has not been impleaded in the same, and from filing a fresh one with the name of the said party added to it. The Court will, if satisfied that there was sufficient cause for filing the appeal beyond time, extend the period of limitation, and the same result, which is intended to be achieved by an application under Order XLI, Rule 20, Civil Procedure Code, would evidently be achieved but by following the aforesaid circuitous path. The Court will not in the above mentioned case refuse to extend time on the only ground

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

that the respondent which is newly added had acquired a valuable right if on the facts and circumstances of the case the Court is satisfied that there was sufficient cause for extension of the period of limitation. To avoid the cumbersome course of first withdrawing an appeal and then filing another, the legislature seems to have thought fit to enact Order XLI, Rule 20, Civil Procedure Code, empowering the Court to allow addition of parties in the pending appeals in suitable cases. The words "interested in the result of the appeal" can reasonably be interpreted only to mean parties who are sought to be affected by the decision of the appeal. The legislature probably intended that the Court may exercise its jurisdiction under this rule only *qua* the parties whose presence is actually necessary as opposed to those whose it is not. If a particular appellant files an appeal for the setting aside of a decree passed jointly in favour of four persons, all the four persons must be deemed to be interested in the result of the appeal, and if one of them has, by mistake (as opposed to deliberation), not been made a party, the Court has jurisdiction under this rule to permit his name being impleaded. The legislature has deliberately not left the matter in the option of the appellant but has vested the Court with powers obviously for the reason that the Court will pass orders only if after taking all the circumstances of the case into consideration it comes to a decision that the party left out by mistake should be allowed to be added in spite of the period of limitation for filing a fresh appeal having run out. In some of the cases, e.g., *Azrar Husain and others* v.*Ahmed Raza and others* (1), *Gokulananda Harichandan* v. *Iswar Chhotrai* (2), *Swaminatha Odayar* v. *T. S. Gopalaswami Odayar*

(1) A.I.R. 1937 All. 82
(2) A.I.R. 1937 Pat. 11

and others (1), and *Munchi Ram* v. *Abdul Aziz* (2), this provision of law was, under the influence of the judgment of their Lordships of the Privy Council made use of only for the purposes of adding parties who could not be termed as necessary parties and who were either *pro forma* parties or somewhat of that nature. This could hardly have been the intention of the legislature while enacting the provisions of Order XLI, Rule 20, Civil Procedure Code, and it is difficult to believe that the legislature did not provide for a rule enabling the Court to allow necessary parties to be impleaded when the appellant was not able to implead them originally on account of a genuine, *bona fide* and honest mistake.

Up to the date of publication of the judgment of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seehai Ache and others* (3), the Chief Court of Punjab and the Lahore High Court almost consistently took the view that the parties to the original suit not impleaded in apppeal within the period of limitation on account of a *bona fide* mistake could always be allowed to be added : see in this connection *Moti Ram, Prem Chand and another* v. *Kewal Ram Dharam Chan and others* (4), *Lallu Mal and another* v. *Firm Nanhe Mal Kallan Mal* (5), and *Jalal Din* v. *Karim Bakhsh and another* (6), and a nuber of rulings mentioned in the reports of the aforesaid three judgments. In the Allahabad High Court, Mahmood, J., in *Sohna* v. *Khalak Singh and another* (7), also took the same view and a Full Bench of that Court in *Bindeshri Naik* v. *Ganga Saran Sahu and*

(1) I.L.R. 1938 Mad. 52
(2) A.I.R. 1943 Lah. 252
(3) I.L.R. 6 Rang. 29
(4) A.I.R. 1928 Lah. 202
(5) A.I.R. 1927 Lah. 738
(6) A.I.R. 1930 Lah. 295
(7) I.L.R. 13 All. 78

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

another (8), endorsed the same view. After the Privy Council case was published a contrary view was no doubt taken by some of the High Courts, but that was probably due to the fact that the High Courts who delivered those judgments thought that the Privy Council had laid down an inflexible rule of the interpretation and that they were bound by the view of the Privy Council.

As stated above, I am of the opinion that no inflexible rule of interpretation was ever laid down by their Lordships of the Privy Council and that the judgment in that case must be deemed to be limited to the peculiar facts of that case. In case, however, their Lordships intended to lay down any such rule, I would with very great respect venture to differ from the same and to hold that the rule does enable the Court to decide on the facts and circumstances of each case whether the party sought to be added is "interested in the result of the appeal" and whether the circumstances and facts of the case are such that the Court should exercise its discretion in favour of permitting the party to be added beyond the period of limitation which will necessarily include the decision whether the case is a fit one for exrcise of discretion under section 5 of the Indian limitation Act. If the Court can allow extension of time for the purpose of filing a new appeal against a respondent who has acquired a valuable right by lapse of period of limitation for filing an appeal, it does not stand to reason that in an appeal already filed a respondent whose name has been omitted by a *bona fide* mistake from the array of parties cannot be allowed to be added and the Court is powerless in this particular respect.

The cases that have taken the opposite view and in which it has been found that the Privy

(8) I.L.R. 14 All. 156

Council case has laid down an inflexibile rule of interpretation of the words "interested in the result of the appeal" as used in Order XLI, Rule 20, Civil Procedure Code, are as follows :—

(1) *Labhu Ram and others* v. *Ram Partap and others* (1) ;

(2) *Abrar Husain and others* v. *Ahmad Raza and others* (2) ;

(3) *Attar Singh* v. *Debi Sahai* (3) ;

(4) *Rameshwar Das* v. *Official Receiver*, Delhi (4) ;

(5) *Ram Lal and another* v. *Kharaiti Ram and others* (5) ;

(6) *Rattan Lal Chawla* v. *John Vasica* (6) ;

(7) *Bank of Chettinad Limited* v. *U. Chan Hmwe* (7) ;

(8) *Sain Das* v. *Lakhajee and another* (8) ;

(9) *Hayat and others* v. *Mutalli and others* (9) ; and

(10) *Jagan Singh and another* v. *Mst. Panni and others* (10).

With the exception of the first two of these cases all of them have merely relied on *Chokalingam Chetty* v. *Seethai Racha* (11), and have given no additional reason in support of the view taken

(1) I.L.R. 26 Lah. 18 (F.B.)
(2) A.I.R. 1937 All. 82
(3) A.I.R. 1937 All. 243
(4) A.I.R. 1938 Lah. 325
(5) A.I.R. 1935 Lah. 802
(6) A.I.R. 1950 E.P. 355
(7) A.I.R. 1941 Rang. 236
(8) A.I.R. 1941 Rang. 63
(9) I.L.R. 1937 Lah. 746
(10) A.I.R. 1954 Punj. 20
(11) I.L.R. 6 Rang. 29

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

Rattan Lal Chawala v. *John Vasica* (1), and *Jagan Singh and another* v. *Mst. Panni and others* (2), have been decided on the basis of the Full Bench view in *Labhu Ram and others* v. *Ram Partap and others* (3), which was in its turn based mainly on the view of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seethai Racha* (4).

In *Labhu Ram and others* v. *Ram Partap and others* (3), the facts were that on the 16th January, 1937, one Ram Partap along with 19 other persons including his sons and grandsons instituted a suit against Labhu Ram and 32 other persons claiming a perpetual injunction against the first seven defendants requiring them to demolish a structure put up by them on a well which was alleged to be joint of the parties. The suit was resisted by the contesting defendants on various grounds. On the 14th January, 1939, the trial Court passed a decree for perpetual injunction requiring the defendants to restore the well to its original condition. It was provided in the decree that this restoration would be effected at the expense of the plaintiffs and would be carried out in such a manner as not to injure the building constructed on the well. Against this decision both parties appealed to the Court of the District Judge, the plaintiffs praying for a decree for the relief as claimed by them and the defendants seeking the dismissal of the suit *in toto*. In the memorandum of appeal submitted by the defendants the names of Indar Kumar and Krishan Kumar, the two minor sons of Darbar Chand, who was a son of Ram Partap plaintiff, were not mentioned among the respondents. At the hearing of the appeal before the District Judge, an objection was raised by the plaintiffs that the

(1) A.I.R. 1950 E.P. 355
(2) A.I.R. 1954 Punj. 20
(3) I.L.R. 26 Lah. 18 (F.B.)
(4) I.L.R. 6 Rang. 29

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

appeal filed by the defendants was not properly constituted as two of the plaintiffs in whose favour along with others a joint decree had been passed had not been impleaded as parties. The defendants urged in reply (1) that the two plaintiffs whose names had not been included in the memorandum of appeal were not necessary parties to the suit and could be safely omitted from the appeal as their granfather Ram Partap had brought the suit in the capacity of *karta* of the joint Hindu family and as such could maintain the suit even without joining them as plaintiffs (2) that even if these respondents were necessary parties, this mistake could be rectified by impleading them under Order XLI, Rule 20, Civil Procedure Code, or under Order 1, Rule 10, read with section 107(2), or, at any rate, under section 151, Civil Procedure Code, (3) that the appeal of Labhu Ram etc. having been filed after the appeal of the plaintiffs could be treated as cross-objections, and (4) that even if any of the grounds did not prevail, the District Judge could of his own accord grant the relief prayed for Labhu Ram and others under Order XLI, Rule 33, Civil Procedure Code, inasmuch as the appeal of the plaintiffs was at least properly constituted and provisions of Order XLI, Rule 33, Civil Procedure Code, enabled the Court to pass any decree in that appeal. The case originally came up before Din Mohammad, J., who referred it to a Division Bench. Harries, C. J. and Abdur Rahman, J., before whom it then came up referred it to a larger Bench. Din Mohammad, J., who delivered the main judgment of the Full Bench came to the conclusion that Krishan Kumar and Indar Kumar were necessary parties and could not be impleaded as such either under Order XLI, Rule 20, or Order 1, Rule 10, Civil Procedure Code, or under the inherent powers of the Court. He was, however, of the opinion that the appeal filed

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

by Labhu Ram, etc., could be treated as cross-objections to the appeal filed by the plaintiffs and that it did not matter that Krishan Kumar and Indar Kumar had not been impleaded as parties to the cross-objections. The case was under these circumstances proceeded with on merits and the technical objections did not have any adverse effect on any of the parties. On the point of Order XLI, Rule 20, Civil Procedure Code, Din Mohammad, J., considered a large number of cases, but placed his reliance mainly on the judgment of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Suthai Acha* (1), with regard to which he observed at page 35 of the report as under:—

> "As I read this judgment, it set its seal on the matter in controversy and ruled once for all that if once the time for filing an appeal had expired, persons who were parties to the original suits but had been left out on appeal could not be added, unless it was shown that they were interested in the result of the appeal in any manner. It further follows from the passage quoted above that, although Order 1, Rule 10, was present to the minds of their Lordships while dealing with this aspect of the case and although section 107 of the Code of Civil Procedure had been brought to their Lordships' notice, they did not invoke any of these provisions to enable an appellate Court to add such respondents in appeal. In my view, therefore, all those pervious authorities which laid down to the contrary were

(1) I.L.R. 6 Rang. 29

rendered obsolete by this judgment and could no longer be relied upon in support of the propositions of law enunciated therein."

In *Akbar Hussain and others* v. *Ahmed Raza and others* (1), the matter at first came up before a Division Bench consisting of Niamat Ullah and Smith, JJ., but owing to the difference of opinion between them the case was ultimately laid down before Suleman, C. J., Niamat Ullah, J., was of the opinion that their Lordships of the Privy Council never intended to hold that in no conceivable case can the Court implead a party as respondent if he was not impleaded by the appellant within limitation. It was observed by him at page 84 of the report as under:—

"It is perfectly clear to me that their Lordships did not lay down the absolute rule that a person necessarily ceases to be interested in the result of the appeal, if he was not impleaded as respondent within the period of limitation. Their Lordships' view has reference to the facts of the particular case before them, in which the defendant-respondents in appeal were transferees from a defendant who was no party to the appeal and who was not a mere *pro forma* defendant only, but one in whose absence the appeal could not be heard. The High Court refused to implead them in appeal. The fact that their Lordships pointed out that the plaintiff-appellant in that case had failed to show the interest of the defendant not impleaded in appeal is a clear indication of the

(1) A.I.R. 1937 All. 82

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

existence in their Court of a discretion to implead as respondent a party against whom no appeal has been preferred within limitation. It depends on the circumstances of each case whether he is interested in the appeal or not. In other words, the failure of the appellant to implead a respondent within limitation is not conclusive and the Court may in spite of it implead a party as respondent, though the period of limitation for appeal has expired, provided it considers, on the examination of the facts of the case, that such party is interested in the result of the appeal."

Smith, J., did not agree with the said view. When the case was placed before Suleman, C. J., he observed at page 89 of the report as under:—

> "I am, therefore, of opinion that if a joint decree were passed in favour of a number of parties and an appeal were preferred against only some of the joint decree-holders leaving out the rest and the period of limitation were to expire then it would be too late for the lower appellate Court to implead such joint decree-holders as respondents in the appeal in order to consider the appeal against them and pass a decree against them."

It is on these remarks only that the learned counsel for the respondents chiefly relies. It is, however, to be noted that the facts of this case were entirely distinguishable from those of the present case. There the appeal had been filed by a contesting

defendant against a plaintiff who had obtained the decree against him. No decree had been passed against defendants Nos. 2 to 7 and the contesting defendant in his appeal did not implead the said defendants. A preliminary objection was taken that the appeal was not properly constituted in the absence of defendants Nos. 2 to 7 and a prayer was made by the appellant that they may be allowed to be added. The lower appellate Court allowed them to be added and the decision of the lower appellate Court was upheld by the High Court in second appeal. Suleman, C.J., in the last paragraph of the judgment observed as under :—

> "It is to avoid such a conflict between the appellate Court's decree and the trial Court's decree that the lower appellate Court thought it just to implead defendants 2 to 7. In any case, defendants who have not been impleaded in an appeal can be impleaded by filing an appeal against them accompanied by an application under section 5, Limitation Act, for extension of time. I consider that in view of the ambiguous language used in the relief and the decree, there was ample justification for the contesting defendant not to implead defendants 2 to 7, and regard them as not persons in whose favour any decree had been passed. This was accordingly a fit case under section 5, Limitation Act. I would, therefore, hold that in the special circumstances of this particular case, there being in strictness no decree in favour of defendants 2 to 7, the appellate Court had jurisdiction to implead them as respondents, so that they

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

may be bound by the final order. *Had the decree been passed in favour of the plaintiffs as well as defendants 2 to 7, I would have come just to the contrary conclusion.* This is my answer to the question referred to me."

The observations of Suleman, C.J., which I have underlined in the above quotation can at the most be treated as an *obiter dicta* for the purposes of this case and cannot be deemed to be a direct authority on the point.

In *Attar Singh* v. *Devi Sahai and others* (1), a case which came up for hearing before Suleman, C.J., sitting singly about six months after his decision in the aforesaid case—a similar question arose and the judgment of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seethai Acha* (1), was quoted before him and he observed with regard to the same as under :—

"Although it is true that in that case on the merits their Lordships were not disposed to allow the respondent to be added even if under that rule the Courts could in a proper case add a defendant as a respondent for the purpose of passing a decree against him, but the view expressed by their Lordships that a person who was interested in the decree of the trial Court and who has not been impleaded in the appeal is no longer interested in the result of the appeal necesarily implies that Order XLI, Rule 20, would not be applicable to such a case, and therefore, the appellate Court would not have any jurisdiction

(1) A.I.R. 1937 All. 243
(2) I.L.R. 6 Rang. 29

at all to implead him after limitation has expired. Cases of hardships are not without a remedy. Section 5, Limitation Act, expressly provides for an appeal being filed against a respondent beyond time, if good cause is shown for not preferring the appeal in time. If owing to some *bona fide* mistake or other sufficient cause a defendant has been omitted from the memorandum of appeal there is nothing to prevent the appellant from filing a fresh appeal against him even though limitation has expired and the appeal can be admitted if he satisfies the appellate Court that there was sufficient cause for not appealing against him within the prescribed time. But the filing of an appeal beyond time and getting the delay condoned by showing sufficient cause within the meaning of section 5, Limitation Act, is one thing and the power of an appellate Court to implead a party afresh and then to pass a decree against him under Order XLI, Rules 20 and 33 is quite another thing. In the one case the appellant is entitled to get rid of the bar of limitation by showing sufficient cause. In the other case the Court by impleading the new party would be depriving him of his plea of limitation and destroying by its own act a valuable right which has accrued to him."

In *Rameshwar Das* v. *Official Receiver Delhi* (1), *Ram Lal and another* v. *Kharaiti Ram and*

(1) A.I.R. 1938 Lah. 325

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

others (1), *Hayat and others* v. *Mutalli and others* (2), and *Sain Das* v. *Lakhajee and another* (3), no reasons at all are given excepting that it is found in them that the Privy Council has laid down a rule in *Chokalingam Chetty* v. *Seethai Acha* (4), by virtue of which no party can ever be added in an appeal if he has not been made a party within the period of limitation prescribed for the filing of the appeal.

In *Rattan Lall Chawla* v. *John Vasica* (5), an application for leave to appeal to the Supreme Court of India was made and in the said application a company which was a party to the original proceedings was not made a party. At the hearing Mr. Rattan Lal Chawla who appeared for the petitioner prayed that he be allowed to amend the petition and to add parties. It was observed as under in the penultimate paragraph of the Judgment.

> "I am unable to grant the prayer because by the non-inclusion of the name of the company in the list of respondents the appeal has become barred by time and, therefore, the name cannot be added as a respondent (see *Rameshwar Das* v. *The Official Receiver, Delhi,* (6), and (4)."
>
> *Chokalingam Chetty* v. *Seethai Acha,*

Rameshwar Das v. *Official Receiver, Delhi,* (6), is its turn had relied only on the observations

(1) A.I.R. 1935 Lah. 802
(2) I.L.R. 1937 Lah, 746
(3) A.I.R. 1941 Rang. 63
(4) I.L.R. 6 Rang. 29
(5) A.I.R. 1950 E.P, 355
(6) A.I.R. 1938 Lah. 325

of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seethai Acha* (1). It is, therefore, clear that the case was decided on the basis of the Privy Council judgment as interpreted in *Rameshwar Das* v. *Ocicial Receiver, Delhi* (2).

In *Jagan Singh and another* v. *Mst. Panni and others* (3), a party was sought to be added in appeal and Khosla, J., refused to permit the same to be done on the basis that A.I.R. 1944 Lah. 76 which is the same as *Labhu Ram and others* v. *Ram Partap and others* (4), did not allow that course.

From the aforesaid discussion, it is quite clear that the Rulings taking the view as contended for by the respondent merely rely on *Chokalingam Chetty* v. *Seethai Acha* (1), I have already dealt with the said case at great length and found that the said case never intended to lay down and did not actually lay down any inflexible rule of interpretation of the words "interested in the result of the appeal" as used in Order XLI rule 20, Civil Procedure Code, and that the rule certainly empowers the Court to add parties to the appeals in suitable cases and presumably was enacted for this very purpose.

The next point that arises for decision is whether a party can be added in appeal irrespective of the provisions of Order XLI rule 20, Civil Procedure Code, either under Order 1 rule 10, read with section 107(2), Civil Procedure Code, or under the inherent powers saved by section 151, Civil Procedure Code.

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(1) I.L.R, 6 Rang: 29
(2) A.I.R. 1938 Lah, 325
(3) A.I.R. 1954 Punj. 20
(4) A.I.R. 1944 Lah. 76=I.L.R. 26 Lah. 18 (F.B,)

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

Their Lordships of the Privy Council referred to Order 1 rule 10 and section 107, Civil Procedure Code, but recorded no decision with regard to the applicability or otherwise of the said provision. Now, section 107(2) of the Code of Civil Procedure provides as under:—

> "Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein."

It is argued on behalf of the appellant that the appellate Court has under this provision of law the same powers as have been conferred by the Code on Courts of original jurisdiction. Provisions of Order 1 rule 10, Civil Procedure Code, are then relied upon, and it is contended that the appellate Court can allow addition of parties under the said provisions. The powers of the original Court under the provisions of this rule, however, are subject to section 22 of the Indian Limitation Act, and there can be no doubt that as a combined effect of section 107(2), Order 1 rule 10, Civil Procedure Code, and section 22 of the Indian Limitation Act, the appellate Court can always allow a party to be added, if no question of limitation is involved in the matter. Once the period of limitation has run out, the appropriate provisions enabling the appellate Court to allow parties to be added to the appeal will, in my opinion, be those contained in Order XLI rule 20, Civil Procedure Code, or section 151, Civil Procedure Code.

With regard to the exercise of inherent powers, their Lordships of the Privy Council

made no reference at all in their judgment in *Chokalingam Chetty* v. *Seethai Acha,* (1). As I have pointed out above, the case before their Lordships was probably not a fit one for the exercise of inherent powers inasmuch as (1) the case of the plaintiff-appellant was found by all the Courts to have been based on allegations which were made "recklessly and without any foundation", and (2) the conduct of the plaintiff-appellant as also of his assignor, i.e., the Official Assignee, was found by their Lordships of the Privy Council to be one which could not be called above board.

In *Labhu Ram and others* v. *Ram Partap and others* (2), Din Mohammad, J., however, dealt with the point and observed as follows:—

> "Similarly, I am disposed to think that section 151, Civil Procedure Code, too cannot be invoked in such cases. As I read that section, it is a residuary section and not an overriding provision of law. In other words, it comes into play only where no specific provision is made to meet an exigency that arises and cannot be relied upon to enable a Court to disregard a clear provision of law and to perform an act which may otherwise be illegal. If once it is held that so long as the Privy Council judgment reported as *V.P.R. Chokalingam Chetty* v. *Seethai Acha,* (1), holds the day, an appellate Court has no power to add as a respondent a person who was a party to the suit and against whom the appeal

(1) I.L.R. 6 Rang. 29
(2) I.L.R. 26 Lah. 18 (F.B.)

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

is barred, section 151, would not enable the same Court to make the addition although prohibited otherwise."

In a larger number of cases, however, the inherent powers of the Court have been exercised for this purpose and parties left out by *bona fide* mistake have been allowed to be added in appeal after the expiry of the period of limitation prescribed for filing of the same; see in this connection:—

(1) *United Provinces* v. *Mt. Atiqa Begum and others* (1).

(2) *Shanti Lal and others* v. *Hira Lal Sheo Narain and others* (2).

(3) *Jangir Singh etc.* v. *Mit Singh etc.* (3).

(4) *Beas Singh* v. *Baldeo Pathak* (4).

(5) *Sri Mati Hemanigini Devi* v. *Haridas Banerjee* (5).

(6) *Munshi Ram* v. *Abdul Aziz* (6).

(7) *Pulin Bihari Roy* v. *Mohindra Chandra Ghosal and others* (7).

(8) *Maruli Gopalrao* v. *Khushalrao Narayanrao & others* (8).

(9) *Kannusami Chetti* v. *M. Rabiath Ammal and anothers* (9).

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(1) A.I.R. 1941 F.C. 16
(2) I.L.R. 23 Lah. 603
(3) A.I.R. 1955 Pepsu 62
(4) I.L.R. 7 Pat. 510
(5) 3 Pat. L.J. 409
(6) A.I.R. 1943 Lah. 252
(7) 34 Cal. L.J. 405
(8) A.I.R. 1951 Nag. 415
(9) A.I.R. 1933 Mad. 806

(10) *Pulin Bihari Roy and others* v. *Mahendra Chandra Ghosal and others* (1).

(11) *Gokulananda Harichandan* v. *Iswar Chhotrai* (2).

(12) *Jalal Din* v. *Karim Bakhsh and anothers* (3).

In *United Provinces* v. *Atiqa Begum and others* (4), at page 28 of the report it was observed by Suleman, J., as under, while dealing with 0.41 rule 20 C.P.C:—

> "But the language of the rule does not show that it is exclusive or exhaustive so as to deprive a Court of any inherent power which it may possess and can exercise in special circumstances, and which has been saved by section 151, Civil Procedure Code."

Under the inherent powers of the Court, parties were allowed to be added in appeal by the Federal Court.

In *Shanti Lal and others* v. *Hira Lal Sheo Narain and others* (5), the facts were that an Official Receiver who was a party to the suit and to the appeal in the lower appellate Court was not added as a respondent in second appeal filed in the High Court. When the case came up for hearing in the High Court a preliminary objection was raised that the appeal was not properly constituted inasmuch as the Official Receiver who was a necessary party was not impleaded as a party in

(1) A.I.R. 1921 Cal. 722
(2) I.L.R. 15 Pat. 379
(3) A.I.R. 1930 Lah. 295
(4) A.I.R. 1941 F.C. 16

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

the appeal. An application was then filed under Order XLI rule 20, and sections 151 and 107 of the Code of Civil Procedure for impleading the Official Receiver as respondent. In this application it was pointed out that in the certified copy of the judgment of the District Judge supplied to the appellant, the Official Receiver was not shown as a party to the appeal in that Court though in the copy of the decree he was so shown. The counsel stated that his clerk while preparing the list of parties which was to be attached to the memorandum of appeal copied the names as given in the title of the judgment of the lower appellate Court, and for this reason the name of the Official Receiver was omitted from the memorandum of appeal of the second appeal. This application was opposed by the respondents who contended that the Official Receiver could neither be added under any provision of law nor under the inherent powers of the Court, and reliance for this purpose was placed on the decision of their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seethai Acha* (1), Tek Chand, J. who delivered the main judgment of the Division Bench allowed the Official Receiver to be added under the inherent powers of the Court and observed at page 609 of the report as follows:—

> "In the peculiar circumstances of the case, we are of opinion that the prayer for adding the Official Receiver as a respondent should be granted and the delay condoned under section 5 of the Limitation Act, and we order accordingly."

In support of his judgment he relied on the remarks of the Division Bench of the Bombay High

(1) I.L.R. 6 Rang. 29

Court in *Darbar Shri Khachar Alabhai Vajsurbhai* v. *Khachar Bhura Bhaya and others* (1).

In *Jangir Singh and others* v.*Mit Singh and others* (2), the name of a plaintiff had been omitted from the memorandum of appeal filed by the defendants on account of the sameness of his name with that of another plaintiff. The mistake came to light at the hearing of the appeal and the appellants then sought permission to correct the memorandum of appeal by adding the name of that plaintiff. This course was opposed by the respondents who relied on the Privy Council case in *Chokalingam Chetty* v. *Seethai Acha* (3), and on the Full Bench case of the Lahore High Court reported as *Labhu Ram* v. *Ram Partap* (4). The counsel for the appellants relied on *United Provinces* v. *Mt. Atiqa Begum and others* (5). The Division Bench of the Pepsu High Court consisting of Gurnam Singh and Mehar Singh, JJ. before whom the said appeal was placed for hearing, considered a large number of cases for and against the proposition and observed at page 64, of the report as under:—

> "So the weight of judicial opinion is against the view of Din Mohammad, J., in *Labhu Ram* v. *Ram Partap* (4). We prefer to follow the dictum of Sulaiman J. in *United Provinces* v. *Mt. Atiqa Begum and others* (5), and particularly as it is not opposed to the decision in the Privy Council case in *V. P. R. V. Chokalingam Chetty* v. *Sethai Acha and others* (3). The present being a

(1) I.L.R. 1937 Bom. 602 at 614
(2) A.I.R. 1955 Pepsu 62
(3) I.L.R. 6 Rang. 29=A.I.R. 1927 P.C. 252
(4) I.L.R. 26, Lah. 18 (F.B.) = A.I.R. 1944 Lah. 76
(5) A.I.R. 1941 F.C. 16

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

case in which the name of plaintiff Ishar Singh, son of Fateh Singh was omitted by a *bona fide* mistake because of the sameness of his name with that of another plaintiff, we are of the opinion that the Court has power to rectify the mistake and order the addition of Ishar Singh, son of Fateh Singh, as party respondent in the appeal under section 151, Civil Procedure Code. In this view, the judgment of the learned District Judge cannot be upheld."

In *Beas Singh* v. *Baldeo Pathak* (1), it was held that apart from statutory provision there is an inherent power in the Court to add parties to an appeal.

The same view was taken in the earlier Patna case *Sri Mati Hemanigini Devi* v. *Haridas Baneerjee,* (2).

In *Munshi Ram* v. *Abdul Aziz* (3), it was held by Teja Singh, J. that the language of Order XLI rule 20, Civil Procedure Code did not show that it is exclusive or exhaustive so as to deprive a Court of any inherent power under which parties may be added to the appeal pending before the Court.

The same view was taken in other cases mentioned above.

The learned counsel for the appellant contends that the mistake in the present case occurred due to the error in the certified copy of the judgment supplied to his client and that in the circumstances of this case it is necessary that the

(1) I.L.R. 7 Pat. 510
(2) 3 Pat. L.J. 409
(3) A.I.R. 1943 Lah. 252

mistake should be allowed to be rectified. Reliance is placed on a case, *Redger* v. *Comptoired Rscomte de paris'* (1), where it was observed by Carlas L. J:—

> "One of the first and highest duties of all the Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression 'the act of the Court' is used, it does not mean merely the act of the primary, or of any intermediate Court, but the act of the Court as a whole from the lower Court which entertains the jurisdiction over the matter up to the highest Court which finally disposes of the case."

In *Bishna and others* v. *Sucha Singh* (2), it was observed:—

> "Litigants and members of the legal profession have the right to expect that the headings of attested copies of the judgments would show the names of the parties correctly. The omission was through a mere oversight and that he should be made a respondent."

In *Keshorao* v. *Yeshwantrao* (3), an appeal was preferred by the plaintiff against certain persons. The name of one of the defendants was not mentioned in the memorandum of appeal on account of the fact that the certified copies of the judgment and decree supplied to the appellant in that case did not include the name of the said defendant. A division Bench of the Madhya

(1) (1871) 3 P.C. 465, 475
(2) A.I.R: 1934 Lah. 402
(3) A:I,R, 1957 M.B. 17

Notified Area Committee, Buria, Tehsil Jagadhri through its President
v.
Gobind Ram and others

Gosain, J.

Bharat High Court allowed the name to be added under the inherent powers of the Court and for this purpose relied on the Privy Council case referred to above as also on the observations made by a Division Bench of the Lahore High Court in *Bishna etc.* v. *Sucha Singh* (1).

In *Alabhai Vajsurbhai* v. *Bhura Bhaya* (2), and in *Kunhanna Rai and another* v. *Manakke and others* (3), the same proposition of law was laid down.

For the reasons given above, I am of the opinion that no inflexible rule of interpretation of the words "interested in the result of the appeal" as given in order XLI rule 20, Civil Procedure Code, has been given by their Lordships of the Privy Council in *Chokalingam Chetty* v. *Seethi Acha*, (4), and that the view taken of this case by the Full Bench in *Labhu Ram* v. *Ram Partap* (5), as also in the other cases referred to above is not correct, and that it must be decided on the facts and circumstances of each particular case whether the person sought to be added in that case is one interested in the result of the appeal. The Privy Council case cannot, at any rate, be taken to be an authority for the proposition that a party left out or not impleaded in appeal on account of a *bona fide* mistake cannot be so impleaded under the inherent powers of the Court, more especially when the error is on the part of the Court or its officials in supplying an erroneous copy either of the decree or of the judgment.

I would, therefore, answer the question referred to us as follows:—

(1) that if a party to the original proceedings is not impleaded in appeal on

(1) A.I.R. 1934 Lah. 402
(2) I.L.R. 1937 Bom. 602
(3) A.I.R. 1929 Mad. 343
(4) I.L.R. 6 Rang. 29
(5) I.L.R. 26 Lah. (F.B.)

Notified Area Committee, Buria, Tehsil Jagadhri through its President v. Gobind Ram and others

Gosain, J.

account of a *bona fide* and honest mistake on the part of the appellant, the appellate Court has ample powers under Order XLI rule 20, Civil Procedure Code, to allow the mistake to be rectified and the party to be added;

(2) that section 107(2) read with Order I rule 10, Civil Procedure Code, enables the appellate Court to add parties in appeals in suitable cases, but this power must be exercised within the period of limitation; and

(3) that apart from the provisions or Order XLI rule 20, Civil Procedure Code, the appellate Court has inherent powers to permit parties to be added to appeals in suitable cases and the language or rule 20 of Order XLI is not exclusive or exhaustive so as to deprive the appellate Court of the inherent powers in this respect."

DULAT, J.—I agree. Dulat, J.

GROVER, J.—I agree. Grover, J.

B. R. T.

CRIMINAL MISCELLANEOUS

Before R. P. Khosla, J.

SHRI MADHU LIMAYA, CHAIRMAN, SOCIALIST PARTY OF INDIA, BOMBAY,—*Detenue-Petitioner*

versus

THE STATE,—*Respondent*

Criminal Miscellaneous No. 19 of 1959.

1959

Feb., 2nd

Constitution of India (1950)—Article 22—Grounds of arrest not communicated to the accused—Effect of, on