

OGDEN STREET CHURCH OF GOD IN CHRIST a/k/a Ogden Street  
Church of God in Christ of Denver, Colorado, et al.,  
Plaintiffs-Appellants, v. GOSPEL TEMPLE CHURCH OF GOD IN  
CHRIST et al., Defendants-Appellees

No. 73-071

Court of Appeals of Colorado, Division Two  
522 P.2d 757; 1974 Colo. App. LEXIS 941  
April 9, 1974

NOTICE: [\*\*1]

Not Selected for Official Publication

SUBSEQUENT HISTORY: Rehearing Denied April 30, 1974; Certiorari Denied June 7, 1974.

CORE TERMS: congregation, church, national organization, church property, ecclesiastical, unincorporated, purporting, res judicata, conveyances, parsonage, conveyed, pastor, deed

COUNSEL: Robert L. McDougal, Denver, for Plaintiffs-Appellants.

Hyman A. Coggan, Denver, for Defendants-Appellees.

JUDGES: Ruland, Judge. Enoch and Pierce, JJ., concur.

OPINIONBY: RULAND

OPINION: [\*758] Plaintiffs appeal from a judgment dismissing their complaint. We affirm.

From the record it appears that Ogden Street Church of God in Christ was formed in approximately 1935 as an unincorporated association and acquired title to real property and improvements consisting of a church and parsonage. The original pastor was defendant George Smith. The church was affiliated with a national organization with headquarters in Memphis, Tennessee.

An ecclesiastical dispute in the national organization divided the members of the local congregation sometime in 1966. At that time the congregation was comprised of 66 members; four of the members served as trustees, charged with administration of church business. Following the disagreement, three of the trustees and 30 other individuals formed a Colorado corporation in March of 1967, adopting the name of the original unincorporated association, [\*\*2] viz., Ogden Street Church of God in Christ. It appears that 31 of the individuals forming the new corporation were members of the original congregation. The balance of the congregation and defendant Smith

determined to remain together as a congregation, "expelled" the three trustees, and refused the corporate group access to the church property.

Several months after the incorporation, the corporation and the three trustees initiated a class action pursuant to R.C.P.Colo. 23(b) against defendant George Smith. Following motions directed to the original complaint, an amended complaint was filed requesting: (1) A restraining order against Smith, enjoining him from denying free access of plaintiffs to the church; (2) an accounting of church funds; (3) an order confirming Smith's dismissal from the national organization; and (4) a declaratory judgment determining who were members of the church and defining their rights and privileges.

On the basis that the plaintiffs had failed to demonstrate their standing to bring suit under the rule established in *German Evangelical Emmaus Church v. Free Evangelical Emmaus Church*, 87 Colo. 237, 287 P. 89, and had otherwise failed to comply with<sup>[\*\*3]</sup> the requirements of R.C.P.Colo. 23(b), a motion to dismiss the amended complaint was granted on December 12, 1967. No appeal was taken from that judgment.

Following entry of that judgment, defendant Smith and others formed a second corporation denominated Saint Peter's Congregation Church of God in Christ. A deed was then recorded with Ogden Street Church of God in Christ as grantor to defendant Saint Peter's. **However, the deed was signed by officers of Saint Peter's purporting to act as officers of the original unincorporated association.** Saint Peter's then conveyed the parsonage to defendants Smith and Helen M. Smith. The church was subsequently conveyed by Saint Peter's to defendant Gospel Temple Church of God in Christ, but this organization was unable to meet the terms of purchase and has reconveyed to Saint Peter's.

The present suit was then filed pursuant to C.R.C.P. 23.1, by the Ogden Street corporation and its trustees, purporting to represent a majority of the original congregation, <sup>[\*759]</sup> and for the benefit of all of the members of the original congregation. After plaintiffs presented their evidence, the trial court ruled that the judgment entered in 1967 was<sup>[\*\*4]</sup> res judicata and dismissed the second proceeding. Plaintiffs perfected this appeal.

Although many of the allegations of the complaint filed in the present case are the same or similar to the allegations made in the 1967 proceeding, the relief requested is essentially different in that plaintiffs seek here to set aside the conveyances to Saint Peter's, Gospel Temple, and the Smiths and to quiet title to the subject property in their corporation. Plaintiffs, purporting to represent all members of the original congregation, also claim entitlement to return of funds advanced by the congregation to satisfy an encumbrance against the church property. Plaintiffs therefore contend that the 1967 judgment is not res judicata.

The 1967 judgment is res judicata as to the issues pertinent thereto and litigated therein. See *Heiselt v. Brown*, 117 Colo. 48, 184 P.2d 297. However, that judgment may not serve as a bar to transactions occurring subsequent thereto. See *Bear Valley Drive-In Theater Corp. v. Board of County Commissioners*, 173 Colo. 57, 476 P.2d 48. Moreover, although resort may not be made to the courts for resolution of ecclesiastical differences, members of a<sup>[\*\*5]</sup> congregation may seek legal redress to protect property rights. See *Douglass v. First Baptist Church*, 132 Colo. 286, 287 P.2d 965.

The issue then is whether plaintiffs in this case have complied with the requirements for maintaining an action pursuant to C.R.C.P. 23.1. It is clear from the record that the members of the original congregation all participated in making contributions to acquire the church property and to support the church and its pastor. Thus, all of those members still surviving are members of the congregation which plaintiffs seek to represent in this case.

We first note that plaintiffs' complaint is not verified as required by C.R.C.P. 23.1. Even assuming this requirement may be waived, the rule also requires that plaintiffs show that they attempted "to obtain the action [they] desire from the . . . members . . . ." of the original congregation.

In this regard, plaintiffs alleged in their complaint that they attempted to correct the matters in controversy by arbitration without success. Assuming, without deciding, that this allegation meets the requirements of C.R.C.P. 23.1, plaintiffs' evidence totally failed to prove this allegation.

The record<sup>[\*\*6]</sup> indicates that a meeting was called by plaintiffs, but there is no showing that: (1) All members of the original congregation were notified or requested to attend; or (2) that any demand was ever made that the specific conveyances here challenged be set aside. Rather, it appears the purpose of the meeting was probably to discuss the ecclesiastical schism. This failure to satisfy the requirements of C.R.C.P. 23.1 must result in dismissal of plaintiffs' complaint. See *Bell v. Arnold*, 175 Colo. 277, 487 P.2d 545.

The judgment of dismissal is therefore affirmed.

ENOCH and PIERCE, JJ., concur.