



C.R.P.(MD)No.1516 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.02.2024

PRONOUNCED ON: 18 .04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1516 of 2019

and

C.M.P.(MD)No.7975 of 2019

1.Arulmighu Veerasakkadevi Bommathal

Thirukoil,

Vasudevanallur, Sivagiri Taluk,

Worshippers of the temple,

Vasudevanallur Rajakambala Nayakkar

(Thottiya Nayakkar) Samudhayam,

through its President,

Navaneetha Krishnan.

2.1.Arulmighu Veerasakkadevi Bommathal

Thirukoil,

Vasudevanallur, Sivagiri Taluk,

Worshippers of the temple,

Vasudevanallur Rajakambala Nayakkar

(Thottiya Nayakkar) Samudhayam,

through its representative and Temple

Committee President,

N.Nagarajan

: Petitioners/Respondents 4 &5/

Plaintiffs 1 & 2

Vs.



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1.The Executive Officer,
Vasudevanallur Town Panchayat,
Vasudevanallur.

2.The District Collector,
Tirunelveli District.

3.The Tahsildar,
Sivagiri Taluk,
Tirunelveli District. : Respondents 1 to 3/Respondents 1 to 3/
Defendants 1 to 3

- 4.Pandaram
- 5.Gurusamy
- 6.Subbaiah
- 7.Soundarajan
- 8.Palanichamy
- 9.Murugaiah
- 10.N.Mariyappan
- 11.Samuthiravel
- 12.Murugan
- 13.Mariappan
- 14.Kuttiyappan
- 15.P.Raja
- 16.Shenbagam
- 17.Murugan
- 18.Sankar
- 19.Muthukumar
- 20.Gurusamy
- 21.Jeyaraj
- 22.Jeevanandham
- 23.Jothibas
- 24.Sakthivel Rajan
- 25.Santhosh
- 26.Chellappa
- 27.Muthaiah
- 28.Kaliyappan
- 29.Madasamy
- 30.Ramasamy
- 31.Aathiyappan



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32.Moorthy
33.Mariyappan
34.Shanmugavel

: Respondents 4 to 34/Impleading petitioners 1 to 31

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the Sub Court, Sankarankovil in I.A.No.247 of 2018 in A.S.No.38 of 2012.

For Petitioners : Mr.T.S.R.Venkatramana
Senior Counsel
for Mr.S.Prithiviraj

For Respondents : Mr.A.Sivanupandian
Additional Government Pleader
for R.1 to R.3

: Mr.F.X.Eugene
for R.4, 6 to 9, 11, 13
15 to 19, 22 to 32, 34

: No Appearance
for R.12, R.14 and R.21
and for R.5, R.10, R.20, R.23



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.247 of 2018 in A.S.No.38 of 2012, dated 03.06.2019, on the file of the Subordinate Court, Sankarankovil allowing the petition filed under Order 1 Rule 10(2) C.P.C.

2. The revision petitioners as plaintiffs have filed a suit in O.S.No. 128 of 2004, before the District Munsif Court, Sivagiri, for themselves and representing the worshippers of Arulmighu Veerasakkadevi Bommathal Thirukoil belonging to Rajakambala Naicker (Thottiya Naicker) of Vasudevanallur Village against the respondents 1 to 3 claiming declaration that “A” schedule property is belonging to the plaintiffs temple and for mandatory injunction directing the removal of the compound walls in 2nd and 3rd schedules which form part of the 1st schedule of the suit property and for handing over the possession of the same and for permanent injunction restraining the defendants from changing the Government records in respect of I schedule of the property.



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3. The defendants have filed their written statement and contested the same. After full trial, the suit was decreed granting the reliefs of declaration and mandatory injunction as prayed for and the suit with respect to permanent injunction was dismissed vide judgment and decree dated 28.02.2012. Aggrieved by the judgment and decree, the third defendant – Executive Officer of Vasudevanallur Town Panchayat has preferred an appeal in A.S.No.38 of 2012 and the same is pending on the file of the Subordinate Court, Sankarankovil.

4. Pending appeal, the defendants 1 and 2 viz., the District Collector, Tirunelveli and the Tahsildar, Sivagiri have filed an application to transpose them as the appellants, but the said petition was ordered to be dismissed by the appellate Court. Aggrieved by the order of dismissal, the defendants 2 and 3 have preferred a revision before this Court in C.R.P.(PD)(MD)No.439 of 2016 and this Court has permitted for transpose and accordingly, the defendants 2 and 3 were transposed as appellants 2 and 3, in A.S.No.38 of 2012, on the file of the Subordinate Court, Sankarankovil.



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5. Pending appeal, the respondents 4 and 5 representing for themselves and representatives of Senaithalaivar Samuthayam of Vasudevanallur, the respondents 6 and 7 for themselves and representatives of Devendragula Vellalar Samuthayam of Vasudevanallur, the respondents 8 and 9 for themselves and representatives of Thevar Samuthayam of Vasudevanallur, the respondents 10 and 11 for themselves and representatives of Nadar Samuthayam of Vasudevanallur, the respondents 12 and 13 for themselves and representatives of Vaniga Vaisya Samuthayam of Vasudevanallur, the respondents 14 and 15 for themselves and representatives of Vadugayar (Yadavar) Samuthayam of Vasudevanallur, the respondents 16 and 17 for themselves and representatives of Viswakarma Samuthayam of Vasudevanallur, the respondents 18 and 19 for themselves and representatives of Illampillai Samuthayam of Vasudevanallur, the respondents 20 and 21 for themselves and representatives of Gowrava Naidu Samuthayam of Vasudevanallur, the respondents 22 and 23 for themselves and representatives of Konar Samuthayam of Vasudevanallur, the respondents 24 and 25 for themselves and representatives of Saivapillaimar Samuthayam of Vasudevanallur, the respondents 26 and 27 for themselves and representatives of Aadhi Dravidar Samuthayam of



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Vasudevanallur, the respondents 28 and 29 for themselves and representatives of Arunthathiyar Samuthayam of Vasudevanallur, the respondents 30 and 31 for themselves and representatives of Dobi Samuthayam of Vasudevanallur, the respondents 32 and 33 for themselves and representatives of Maruthuva Samuthayam and the respondent No.34 for himself and representative of 24 Manai Telugu Chettiar Samuthayam of Vasudevanallur have filed an application in I.A.No.247 of 2018 under Order 1 Rule 10(2) C.P.C., seeking orders to implead them as respondents in the appeal and they have also separately filed petitions in I.A.Nos.248 to 263 of 2018 under Order 1 Rule 8 C.P.C., seeking permission to proceed with the case in the representative capacity. The revision petitioners/plaintiffs have filed counter statement raising serious objections. The learned Subordinate Judge, after enquiry, has passed a common order dated 03.06.2019, allowing all the petitions and thereby permitted for the impleadment of the respondents 4 to 34 and to proceed with the case for themselves and representing their communities. Aggrieved by the impugned order, the plaintiffs have preferred the present revision.



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6. At the outset, the learned Counsel for the respondents / proposed parties have raised a preliminary objection that since the impugned order was a common order passed in respect of the petitions in I.A.Nos.247 of 2018 to 263 of 2018, filing of one revision petition is legally not maintainable and since the plaintiffs have not challenged the orders passed in other I.As, this revision challenging the order passed in I.A.No. 247 of 2018 itself cannot legally be sustained.

7. The learned Senior Counsel for the revision petitioners would submit that the plaintiffs had challenged the orders passed by the appellate Court invoking Article 227 of the Constitution of India and as such, the question of filing separate revision petitions does not arise at all. Since the revision petitioners have filed the present revision invoking Article 227 of the Constitution of India, the objection of the respondents / third parties is absolutely devoid of merits and the same is liable for rejection. But at the same time, since the revision petitioners invoked Article 227 of the Constitution of India which is an extraordinary remedy, have to necessarily show the grounds and the necessity for invoking the same.



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8. The case of the revision petitioners/plaintiffs is that their temple – Veerasakkadevi Pommathal temple is situated in Natham Survey No. 1004/5, measuring 36 cents, that the said property is shown to be owned by the temple in the Government records, that Rajakambala Naickar (Thottiya Naickar) community people belonging to 68 villages used to celebrate Pongal festival and festivals in the months of Vaigasi and Aadi, that 36 cents of land abutting the temple has been in possession and enjoyment of the plaintiffs and are using the land for the temple purposes, that the third defendant despite objections and protest, had encroached a portion of the suit property and constructed a compound wall and started to use as vehicle stand, that the complaints sent to the defendants 1 and 2 were of no avail and that therefore the plaintiffs were constrained to file the above suit to declare that “A” schedule property is belonging to their plaintiffs temple and for mandatory injunction directing the removal of the compound walls in II and III schedules which form part of the I schedule of the suit property and for handing over the possession of the same and for permanent injunction restraining the defendants from changing the Government records in respect of I schedule of the property.



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9. The case of the respondents / third parties is that the suit property is belonging to the public of Vasudevanallur, that they used to tie their cattles before taking them to grazing, that the temple situated in Natham Survey No.1004/7 has been called as Manthai Vinayagar and the same was recorded in the revenue records also, that the suit property has been referred as Village Natham or vacant Natham in the Adangal register and patta was not issued in favour of anyone, that at the time of UDR scheme, the plaintiffs have fraudulently inserted the words in the records as Arulmighu Veerasakkadevi Pommathal, that the plaintiffs in collusion with the defendants have filed a suit and obtained a decree and judgment fraudulently and that therefore, the proposed parties are necessary parties to the appeal.

10. It is pertinent to note that the defendants 1 to 3 have stated no objections to the above petition before the appellate Court. The learned Counsel for the proposed parties would submit that the appellate Court has specifically observed that the plaintiffs have not claimed ownership over the suit property on the basis of the title deeds, but only on the basis of the revenue records showing the property as Gramanatham. As rightly observed by the learned appellate Judge, the plaintiffs as well as the



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proposed parties are claiming that they are the first occupants of the suit property, as the first occupation would assume importance in Gramanatham lands.

11. As rightly pointed out by the learned Additional Government Pleader for the Government authorities, in the written statement filed before the trial Court, they have stated that general public of Vasudevanallur used to tie their cattle in the suit property, that the suit property is a Government poromboke land, that they have encroached 177sqm., land on the south western corner of the Government Poromboke land in S.No.1004/5 and that the land abutting the said temple is not belonging to the plaintiffs as no pata was issued to anybody.

12. The learned Counsel for the respondents would submit that in the Natham Land Scheme Adangal(நத்தம் நிலவரித் திட்ட துஸை அடங்கல்), the land in S.No.1004/5 has been shown as village natham and the remaining to be the vacant land and Arulmighu Veerasakkadevi Pommathal is shown to be in possession, but in the next column, it has been shown as vacant natham. Moreover, in Ex.A.3, the property has been shown to be classified as Government Poromboke and vacant



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natham in the 'user' column.

13. Considering the pleadings of both sides and the documents produced, the learned appellate Judge has come to a decision that the proposed parties are necessary parties and the relevant passage is extracted hereunder:

“21. அதுபான்று நத்தம் நிலவரித்திட்ட துஸய அட்கலானது ம.சா.ஆ.3 ஆகக் குறியீடு செய்யப்பட்டுள்ளது. ம.சா.ஆ.3 ஏற்பட்ட காலத்தில் சொத்தானது சர்க்கார் புறம்பாக்கு எனக் குறிப்பிடப்பட்டு சொத்தின் பயன்பாடு காலநத்தம் என்று தான் சொல்லப்பட்டிருக்கிறது. சொத்து ம.சா.ஆ.1 – ன்படி கிராம நத்தமாக உள்ள நிலையில் 4 இ 5 எதிர்மனுதாரர்களுக்கு ஆதரவாக அவர்கள்தான் கிராம நத்தத்தின் முதல் அனுபவதாரர்கள் என 4 இ 5 எதிர்மனுதாரர்களுக்கு ஆதரவாக பட்டா எதுவும் கொடுக்கப்பட்டிராத நிலையில் மனுதாரர்கள் மற்படி வாசுதவநல்லுஸர் கிராமத்தைச் சார்ந்த நபர்கள் என்பது 4 இ 5 எதிர்மனுதாரர்கள் தரப்பில் மறுக்கப்படாத நிலையில் தட்களுக்கும் தாவாச் சொத்தில் உரிமை உள்ளது என மனுதாரர்கள் சொத்தின்பரில் உரிமை கொண்டாடுகிற நிலையில் உண்மையிலுய கிராம நத்தத்தைப் பொறுத்து 4 இ 5 எதிர்மனுதாரர்கள் சொத்தின் முதல் கவாந்தாரர்களா? அல்லது மனுதாரர்கள் சொத்தின் முதல் கவாந்தாரர்களா? என்ற



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சொத்தின்புரிவான உரிமை மூலம் குறித்து வினா எழுகிறது.

அந்த வினாவை தீர்மானிப்பதற்கு வாசுதவநல்லுஸரில் வசிக்கும்

மனுதாரர்கள் அனைவரும் அவசியமான தரப்பார்கள்

ஆவார்கள்.”””

14. The learned Senior Counsel for the revision petitioners would mainly contend that the plaintiffs have already filed an application in I.A.No.155 of 2004 under Order 1 Rule 8 C.P.C., seeking permission for filing the suit for themselves and representing the worshippers of Arulmighu Veerasakkadevi Pommathal, that they have complied with the directions of the trial Court including publishing paper publication in Tamil daily, that no one has raised any objections and consequently that petition was ordered to be allowed on 11.03.2004, that the learned Subordinate Judge has exercised a jurisdiction not vested on him in taking the petition in I.A.No.247 of 2018 on file, that the proposed parties are estopped from claiming impleadment and that the present petition is hit by *res judicata* as that of Order 2 Rule 2 C.P.C.

15. The learned Senior Counsel would further submit that the decision given in the petition in I.A.No.155 of 2004 under Order 1 Rule



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8 C.P.C., is not a judgment in personam, but judgment in rem and that the said decision binds the whole world and as such, the order in I.A.No.247 of 2018 is per se illegal and not sustainable. The learned Senior Counsel would further submit that the proposed parties cannot claim that they have no knowledge about the pendency of the suit in O.S.No.128 of 2004, on the file of the District Munsif Court, Sivagiri and that they were ignorant of the proceedings in I.A.No.155 of 2004 filed under Order 1 Rule 8 C.P.C.

16. At this juncture, it is necessary to refer the provision of Order 1 Rule 8 C.P.C.

“(1) Where there are numerous persons having the same interest in one suit, -

(a) one or more of such persons may, with the permission of the Court sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue



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or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.”

17. In order to avoid conflicting decisions and multiplicity of proceedings, when there are numerous persons having the same interest in a suit, one or more of them may, with the permission of the Court, sue or be sued or defend in such suit on behalf of also of others.

18. Considering the provision of Order 1 Rule 8 C.P.C., it is clear that the plaintiff can file the suit in a representative capacity, if there are numerous persons having the same interest. Similarly if the plaintiff wants to file a suit against some numerous persons having same interest, he can very well file against some of them representing the numerous persons. In the case on hand, no doubt as rightly pointed out by the learned Senior Counsel for the plaintiffs, the plaintiffs at the time of filing the suit, have also filed an application in I.A.No.155 of 2004 under Order 1 Rule 8 C.P.C., and as per the directions of the trial Court, complied with the formalities including making a paper publication. No doubt, as rightly contended by the plaintiffs' side, since no objector has turned up and no objection has been received, the trial Court has allowed



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the petition in I.A.No.154 of 2004. But it is pertinent to note that the plaintiffs have obtained permission under Order 1 Rule 8 C.P.C., in I.A.No.154 of 2004 only for representing the worshippers of Arulmighu Veerasakkadevi Pommathal.

19. In the sub rule (1) of Rule 8 of Order 1 C.P.C., the words “so interested” in both (a) and (b) assumes importance. It is pertinent to mention that the plaintiffs have invoked Order 1 Rule 8 C.P.C., for inviting objections from their community/group and not from the other persons. Any person belonging to that category ie., the plaintiffs' community can raise objection that the persons showing as representatives from their community/group are not proper representatives or that they are acting against the interest of their community/group or that they will not prosecute the proceedings properly. Such an objection cannot be raised by any third party, who is totally unconnected with the plaintiffs' community or group. Hence, the order passed in I.A.No.155 of 2004 cannot prevent or debar the third parties from raising objections with regard to the merits of the claim and as such, the above objections raised on the side of the plaintiffs cannot legally be sustained.



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20. Now turning to the second contention that the judgment obtained against the Government will bind all the Citizens, that the Government was impleaded on the basis that they would take care of the interest of the general public and that the above petitions came to be filed only to delay the proceedings and with the sole intention to grab the property from the minority community at the instance of one Thangapalam belonging to majority community. As rightly pointed out by the learned Senior Counsel for the revision petitioners, the very filing of the above petitions creates a doubt over the intention of the proposed parties, but that by itself is not a ground to reject the petitions. In the case on hand, the proposed parties are not claiming their rights through the Government, but are claiming their rights in the property independently. Since the proposed parties are not claiming through the Government, the question of bindingness of the judgment obtained against the Government authorities upon the proposed parties does not arise at all.

21. At this juncture, it is necessary to refer sub-rule (6) of Rule 8 of Order 1 C.P.C., which contemplates that a decree passed in a suit under



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Rule 8 is binding on all persons on whose behalf, or for whose benefit, the suit has been instituted or defended, ie., binding not only on the persons on record as parties, but also on persons not actually impleaded, but represented by those actually on record. It is settled law that any decree obtained in a suit instituted in accordance with the provisions of Order 1 Rule 8 C.P.C., will be binding as res judicata on all members that belong to the Class who are sought to be represented and that decree obtained in such a suit will be binding on the entire Class of persons. Hence, the above objection also cannot legally be sustained.

22. On considering the entire facts and circumstances and taking note of the nature of the suit property shown in the revenue records and the case putforth by the parties, the impugned order permitting the impleadment of the proposed parties cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

23. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.



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18.04.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The Subordinate Court, Sankarankovil.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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