



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.216 of 2016 and
CMP(MD).Nos.951 and 1870 of 2016

V. Vairam Alagappan

: Revision Petitioner

Vs.

1. AR. Narayanan
2. SP. Chinnveerappan
(for themselves and representative capacity
on behalf of the General Body Members
(Sri Kasi Nattukkottai Nagarachatram Managing Society)
3. Sre Kasi Nattukkottai Nagara Chatram,
Managing Society, having its office at
No.3, West Vedampokki Street,
Karaikudi,
rep. through its President
4. Agri SP. Chockalingam
5. VR.Chinna Arunachalam
6. L.Kasinathan
7. M.Ramanathan
8. Dr.A. Nagappan @ Ilango
9. V.Muthu
- 10.T.Vairavan
- 11.V.R.Ramanathan

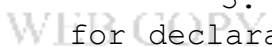
: Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.12.2015 made in I.A.No.231 of 2015 in O.S.No.100 of 2013 on the file of Sub Court, Devakottai.

For Petitioner	: Mr. G. Prabhu Rajadurai
For Respondent Nos.1 and 2	: Ms. P. Kalaiyarasi Bharathi
For Respondent Nos.3 to7 and 9 and 10	: Mr. A.N. Ramanathan
For Respondent No.11	: Mr. A. Thiyagarajan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 07.12.2015 made in I.A.No.231 of 2015 in O.S.No.100 of 2013 on the file of Sub Court, Devakottai.



14. Therefore, if the instant case is looked into from the said angle, interest of justice requires that the persons who are named in the objection petition namely 28 of them should be impleaded as parties to the suit. Since these persons have raised objections as regards the propriety of the petitioners right to use a particular property as pathway to reach his agricultural land, it is but appropriate that all 28

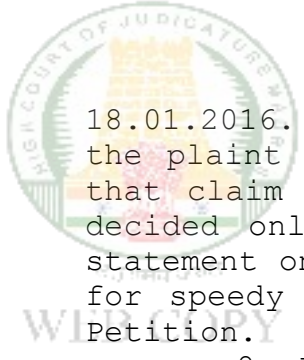


of them are impleaded as defendants to the Suit. However, the Court below without resorting to such procedure, dismissed the petition and granted liberty for the petitioner to file a fresh petition by impleading parties. In my view, this procedure need not be resorted to as it would result in multiplicity of proceedings would and further delay the disposal of the Suit. In order to do substantial justice, the objectors have to be necessarily made as parties to the Suit. Form the tenor of the objection given, it appears that they have been opposing the claim of the petitioners on merits. Therefore, it is necessary that these objectors are also impleaded as defendants in order to fulfill the mandatory requirement under Order 1 Rule 8 CPC. Though it is contended that the objection by the 28 persons in on the merits of the suit claim and not as regards the application under Order 1 Rule 8 CPC, ends of justice would be met only if they are impleaded as defendants, as any decree, if granted would have an effect on those objectors, who claim to be residents of the said hamlet.

(i) 2014(7) MLJ 616 (Vellaigounder @ Kuppu and another Vs. Chinnasevai Gounder and others), relevant para 9, wherein it has been held as follows:—

9. From a perusal of the above said provision, it is abundantly clear that the purpose of issuing public notice under Order 1 Rule 8 CPC is to make the public aware that the suit is being instituted in a representative capacity by contending that the same is being instituted on their behalf. Thus, the idea, behind such notice is to see as to whether any one has any any objection against those person / persons who intend to file such suit in a representative capacity. Persons having no objection need not come to the Court and say that they have no objection. On the other hand, persons who have objections will have to appear before the Court and file their objections. If such objections are raised and filed, it is the duty of the plaintiffs to make them as party defendants. That being the legal position, the Court below is not justified in holding that the objectors are at liberty to implead themselves as defendants in the said suit, without directing the plaintiffs to implead them as party defendants in the suit.

7. The respondents 1 and 2 filed counter affidavit with vacate stay petition stating that the petitioner and 11th respondent filed Interlocutory Application for impleading themselves as defendants after 2 ½ years of filing of suit and after trial commenced. The petitioner and respondents 1 and 2 along with other 11 members issued notice on 04.10.2013 through Advocate to the respondents 3 to 10. Now, the petitioner cannot take a different stand to support respondents 3 to 10. The petitioner and 11th respondent filed Interlocutory Application only at the instigation of the respondents 3 to 10. One L. Raman Chettiyar and MCN.Manickam Chettiyar also filed I.A.No.8 of 2016 for impleading them as defendants. The said application was dismissed by order dated,



18.01.2016. The respondents 3 to 10 filed I.A.No.294 of 2014 to reject the plaint and the same was also dismissed on 09.10.2015, on the ground that claim of estoppel is mixed question of facts and law which can be decided only in the main suit. The respondents 3 to 10 filed written statement only after order passed by this Court in CRP(MD).No.743 of 2013 for speedy disposal of suit and prayed for dismissal of Civil Revision Petition.

8. I have heard the learned counsel appearing on either side and perused the materials available on record.

9. The respondents 1 and 2 filed suit in a representative capacity on 30.10.2013. The petitioner along with respondents 1 and 2 and other members issued notice to the respondents 3 to 10, on 04.10.2013 supporting the claim of the respondents 1 and 2. Now, after 2 ½ years when the trial has commenced, the petitioner and 11th respondent filed application for impleading themselves.

Order 1 Rule 8 of CPC reads as follows:-

8. One person may sue or defend on behalf of all in same interest:-

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

2) The Court shall, in every case where a permission or direction is given under sub rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

4) No part of the claim in any such suit shall be abandoned under sub-rule (1) and no such suit shall be withdrawn under sub-rule (3) of Rule 1 of Order XXIII and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule(2).

5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

6) A decree passed in the suit under this rule shall be binding, on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.



As per this Rule, a person who opposed the said suit can be impleaded in the said suit as defendant. But, the petitioner did not oppose the suit for impleading themselves as defendants at the earliest. On the other hand, at the time of filing of suit, the petitioner and 11th respondent were supporting the contention of the respondents 1 and 2 / plaintiffs and also issued notice to the respondents 3 to 10. The respondents filed written statement only after order passed by this Court in CRP(MD). No.743 of 2015 on 04.06.2015 for speedy disposal of the suit. Hence, the Judgments relied on by the counsel for the petitioner is not applicable to the facts of the present case. In the circumstances, the application filed by the petitioner after commencement of trial is not maintainable and the same is liable to be dismissed.

10. In the result, the Civil revision petition is dismissed confirming the impugned order dated, 07.12.2015 made in I.A.No.231 of 2015 in O.S.No.100 of 2013 on the file of Sub Court, Devakottai. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge, Devakottai.

- + 1 CC TO M/S.G.PRABHU RAJADURAI, ADVOCATE IN SR NO. 19239/16
- + 1 CC TO M/S.AN.RAMANATHAN, ADVOCATE IN SR NO. 19193/16
- + 1 CC TO M/S.P.KALAIYARASI BHARATHI, ADVOCATE IN SR NO. 19077/16

TRP
TE/AN-MP/ : 21/04/2016 : 5P/5C (IT)

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