



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2016

CORAM:

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THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(PD) (MD).No.273 of 2016 and
CMP(MD).No.1100 of 2016

1. Russel Raj
2. Sadasivan Pillai : Revision Petitioners

Vs.

1. Krishnamony
2. The Sreekarayam,
Nattalam Devaswam,
Nattlam Post and Village,
Vilavancode Taluk,
Kanyakumari District.
3. The Superintendant of Devaswam,
Kuzhithurai Sub Group,
Kuzhithurai and Post,
Vilavancode Taluk,
Kanyakumari District.
4. The Executive Officer,
Incorporated and Unicorproated Devaswam,
Suchindram Post,
Vilavancode Taluk,
Kanyakumari District.
5. Radhakrishnan, : Respondents

Civil Revision Petition is filed under Article 227 of the constitution of India against the fair and decreetal order passed in I.A.No.459 of 2015 in O.S.No.168 of 2011 on the file of the I Additional District Munsif Court, Kuzhithurai, dated 02.11.2015.

For Petitioners : M/s. J. Anandhavalli

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.459 of 2015 in O.S.No.168 of 2011 on the file of the I Additional District Munsif Court, Kuzhithurai, dated 02.11.2015.

2. The revision petitioners are the plaintiffs. The respondents are the defendants. The petitioners filed O.S.No.168 of 2011 for permanent injunction restraining the first respondent from interfering with the affairs of Nattalam Arulmigu Sankaranarayanan Thirukovil and from disturbing any of its Poojas and functions to be performed during Pankuni Thiruvizha or on any other occasions. Subsequently, the respondents 2 to 4 were impleaded as defendants. The fifth respondent got himself impleaded as fifth defendant.



3. The respondents filed written statement and contested the suit. The petitioners and respondents have let in evidence and the suit was posted for arguments. At that stage, the petitioners filed I.A.No. 458 of 2015 and I.A.No.459 of 2015 to reopen the suit and seeking leave to institute the suit as representative of worshippers of temple, respectively. The respondents resisted the same and submitted that the applications are belated one and the HR and CE Department is only dealing with the affairs of the temple. The written statement has been filed as early as on 04.04.2014. The petitioners and respondents have let in evidence and the suit was posted for arguments on 09.04.2015. After taking seven adjournments, the petitioners have filed I.A.Nos.458 and 459 of 2015 to reopen the suit and seeking leave to institute the suit as representative of worshippers of temple. Hence, the learned Trial Judge, after considering the facts of case dismissed the Interlocutory Applications. Against the order passed in I.A.No.459 of 2015, the present revision has been filed.

4. The learned counsel appearing for the petitioners contended that that the application under Order 1 Rule 8 of CPC could be filed at any stage of the suit for the relief sought for by the petitioners in the suit. The judgment relied on by the learned counsel appearing for the petitioners is squarely applicable to the facts of the present case and therefore, the learned Judge ought to have allowed the applications. Further, the learned counsel has relied on the following Judgments:-

(i) 2010(5) CTC 481 (The Tamil Nadu Evangelical Lutheran Church Vs. Daniel Shanmugam and another), wherein in paragraph 15, it has been held as follows:-

15. A reading of the plaint filed by the First respondent shows that the same has not been filed in a representative capacity. It is true that such permission to file or continue a Suit in representative capacity under Order 1, Rule 8 CPC can be obtained at any point of time. As on today, the plaintiff in the suit namely the First Respondent had filed the Suit in his individual capacity as a voter. No where in the pleading, on the face of it, it reveals the plaintiff's right as a voter has been taken away nor is the case in the pleading that the rights of the other eligible voters are taken away. But the ground on which the suit has been laid is basically on the validity of the resolution namely amendments which were brought to the bye-laws. Even though the ultimate prayer in the Suit is challenging the notification calling for election, the entire pleadings goes on in questioning the validity of the resolution. Whether such resolution has been passed in accordance with law or the bye-laws of the society are not, is a matter which has to be ultimately decided by the Civil Court.

(ii) AIR 1990 SC 642 (The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy), wherein in paragraph 7, it has been held as follows:-

7. The provisions of Order 1 of Rule 8 have been included in the Code in the public interest so as to avoid multiplicity of litigation. The condition necessary for application of the provisions is that the persons on whose behalf the suit is being brought must have the same interest. In



other words either the interest must be common or they must have a common grievances which they seek to get redressed. ... The object for which this provision is enacted is really. to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object for its enactment. There are no words in the Rule to limit its scope to any particular category of suits or to exclude a suit in regard to a claim for money or for injunction as the present one.

(iii) 1998(1) LW 759 (Revathy and three others Vs. Ramalingam and another), wherein in paragraph 13 it has been held as follows:-

13.

In this case, there is no manager legally appointed for the idol. The suit has been filed by a worshipper of the temple claiming to represent the inhabitants of a particular street. The right of worshipper to file a suit is recognised by the Supreme Court in the decision reported in AIR 1967 SC 1044 (Bishwanath and another Vs. Sri Thakur Radha Ballabhji and others).

(iv) 1955 (1) MLJ 247 (Kodia Goundar Vs. Velandi Goundar), wherein in paragraph 3 it has been held as follows:-

The point for determination is as to whether the decree for injunction could be enforced against the respondents who are not eo nomine parties to the suit or to the decree. Order 1, rule 8, Civil Procedure Code, lays down the conditions necessary for bringing a representative suit on behalf of or against persons having a common interest. To render a decree in a representative suit to have binding force on the class of persons who are sought to be bound by it, the procedure laid down in Order I, rule 8, has to be strictly followed. A decree obtained in a suit instituted in accordance with the provisions of Order 1, rule 8, will be binding as res judicata on all the members that belong to the class who are sought to be represented. That a decree obtained in such a suit will be binding on the entire class of persons is evident from Explanation VI to Section 11, Civil Procedure Code. Explanation VI is as follows:-

'Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons solitigating.'

The decision in a representative suit on any issue will if the question is raised in any subsequent proceedings be binding not only on the parties but also on all the persons interested in such right and who were constructively



represented in the previous litigation. Such a result would depend not only on the requirements of Section 11, Civil Procedure Code, being satisfied, but it must be shown that the persons who represented the others conducted the litigation bonafide.'

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(v) 1996 TNLJ 494 (Nilgiri District Janatha party Vs. A. Rahim and others), relevant portion reads as follows:-

The above decision clearly shows that the failure to obtain permission under 1 Rule 8 of the Civil Procedure Code is only a procedural irregularity.

On the basis of the above referred catena of decisions learned counsel for the appellant submitted that even at this stage, this Court can grant permission to sue the plaintiff in representative capacity under Order 1 Rule 8 of Civil Procedure Code. He also submitted that by granting such permission it does not alter the nature of character of the suit or the cause of action. However, the learned counsel for the respondents without basing any decisions, simply mentioned that inasmuch as the plaintiff failed to obtain prior permission under Order 1 Rule 8 of Court, it is not open to them to seek permission at the appellate stage. As mentioned above, the learned counsel for the respondents is unable to point out any contra decision with regard to the proposition of law demonstrated by Mr.. K. Govindarajan. In the light of the factual position as well as the decisions of this Court and the Apex Court referred above, I am of the view that by allowing the appellant / plaintiff to file the suit in a representative capacity under Order 1 Rule 8 of the Civil Procedure Code it does not materially change the substance of the suit or alter the nature or character or cause of action of the suit. Hence, in the interest of justice it should be allowed to overcome a technical difficulty in the way of the plaintiff. I am of the firm view that the provisions under Order 1 Rule 8 of Civil Procedure Code applies not only to suits but also to appeals. Hence the submissions made by the learned counsel for the appellant is well founded. Accordingly I allow the CMP.No.9496 of 1996 filed by the appellant / plaintiff under Order 1 Rule 8 read with Sec. 151 of Civil Procedure Code.

(vi) 2001(3) CTC 129 (The Victoria Edward Hall rep. By its Secretary Vs. M. Samraj and 5 others) relevant para 12 reads as follows:-

12. An application for leave of Court under Order 1, Rule 8, C.P.C. can be allowed even at Appellate stage in a suit filed in individual capacity by means of amendment when such amendment does not materially change the nature of suit in view of the decision of this Court reported in M. Pillai V. S. Pillai, A.I.R. 1947 Mad. 205. Same principle has been laid by this Court in Nilgiri District Janatha Party etc., V. A. Rahim and 3 others, 1996 (2) LW 456. In Mukalem Das V. Chhagan Kisan, it has been held that permission under Order 1, Rule 8,



C.P.C. can be granted even at the appellate stage. In *Anandan Vs. Ayyanna Gounder*, 1993 (II) M.L.J. 493, His Lordship Abdul Hadi, J. has held that leave is a condition precedent for institution of a suit under section 92(1), C.P.C, but it is not so, if leave has to be obtained from the Court under Order 1, Rule 8, C.P.C. It has also been held that permission under Order 1, Rule 8, C.P.C. may be granted even after institution of the suit and even at the appellate stage by allowing an amendment if such amendment does not materially change the nature of the suit. In *Assistant Commissioner, H.R. & C.E., Salem v. N.K.S.F. Mudaliar*, , His Lordship M. Srinivasan, J. (as he then was) has held that a person cannot advance the claims of a group of persons or community without adopting the procedure under Order 1, Rule 8, C.P.C., if the relief is prayed for only on the basis of the rights of the community as such. A distinction has to be maintained between cases where individual put forward a right which he has acquired as a member of a community and cases where a right of the community is put forward in the suit. It is also held that if it is the former, the individual is not debarred from maintaining the suit in his own right in respect of a wrong done to him even though the act complained of may also be injurious to some other persons having the same right and if it is the latter, the procedure under Order 1, Rule 8, C.P.C. has to be followed and without doing so, no relief could be granted to the individual concerned.

5. I have heard the learned counsel appearing for the petitioner and perused the materials on record.

6. From the materials available on record it is seen that the suit is of the year 2011 and the trial has commenced and the evidence on behalf of the parties completed and the suit was posted for arguments on 09.04.2015. Thereafter, the petitioners took seven adjournments for arguments on their side and filed the present applications. The petitioners have not stated as to why they have not filed petition for the leave at the earliest. Further the suit is for permanent injunction restraining the respondents from interfering with the affairs of Nattalam Arulmigu Sankaranarayanan Thirukkivil and from disturbing any of its poojas and functions to be performed during Pankuni Thiruvizha or any other occasions.

7. From the judgment relied on by the learned counsel for the petitioner that leave under Order 1 Rule 8 of CPC can be granted at any stage of the suit and also in the appellate stage. But such leave to sue in a representative capacity should not change nature of suit. Those Judgments are not applicable to the facts of the present case as leave to sue in a representative capacity to the petitioners would change entire nature of the suit.

8. The learned Trial Judge considering these facts of the case dismissed the application on the ground that allowing the application would result in commencing the suit from initial stage. Further, the temple in question is public temple under the control of HR and CE Department. The learned Judge has passed the order after considering all



the facts in proper perspective by giving valid reason. Hence, there is no reason warranting interference by this court.

9. In view of the above, the Civil revision petition is dismissed confirming the impugned order of the learned I Additional District Munsif Court, Kuzhithurai, passed in I.A.No.459 of 2015 in O.S.No.168 of 2011, dated 02.11.2015. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

The I Additional District Munsif Court, Kuzhithurai

+1cc to M/s.J.Anandhavalli, Advocate SR.No.12623/16

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