

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2016

PRONOUNCED ON : 09.01.2017

CORAM

THE HON'BLE MR.JUSTICE **M.V.MURALIDARAN**

CRP(PD)No.3247 of 2013

and

M.P.No.1 of 2013

1.R.Kuppusamy

2.S.Shanmugam

3.S.S.Ravikumar

4.K.Murugesan

5.P.Subramaniam

6.K.P.Sakthivel

7.K.P.Loganathan

8.G.Karthikeyan

9.A.Samymuthu

... Petitioners

--Vs--

1.M.Nagaraj

2.M.Shanmuam

3.A.Sundararaj

4.A.Easwaran @ Parameswaran

5.A.Nallasivam

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.04.2013 made in I.A.No.169 of 2013 in O.S.No.64 of 2013, on the file of the learned First Additional District Munsif, Erode.

Petitioners : Mr.N.Manokaran

Respondents: Mr.R.Sunilkumar

ORDER

Heard Mr.N.Manokaran, learned counsel appearing for the petitioners and Mr.R.Sunilkumar, learned counsel appearing for the respondents.

2.A perusal of records show that the respondents 1 & 2 in this C.R.P, as plaintiffs have filed a suit against the petitioners herein and respondents 3 to 5 herein in O.S.No.64/2013 before the Additional District Munsif, Erode for the relief of declaring the suit temple is the public temple belongs to the people of Karundevanpalayam and Thamibaranvalasu and Permanent Injunction. In this case, the

respondents 1 and 2 herein have filed I.A.No.169/2013 under order 1 rule 8 of C.P.C seeking permission to conduct the suit in a representative capacity on behalf of the residents of Karundevanpalayam and Thambiranvalasu. The respondents 1 and 2 herein are claims to be the representatives of the people of the Karundevanpalayam and Thambiranvalasu.

3.The further case of the Plaintiffs/Respondents 1 & 2 herein is that there are 95 families in Karundevanpalayam village and 55 families in Thambiranvalasu village. They are living in the 2 domiciles and because there are numerous persons having same interest in the subject matter, all of them cannot be arrayed as plaintiffs in the suit. Hence the respondents 1 & 2 herein who are the leaders of the 2 domiciles have come forwarded with the suit on a representative capacity as plaintiffs.

4.The Petitioners herein /Respondents 1 to 9 have filed a detailed counter to the said I.A contenting that the petition is not maintainable in law and denied all averments and the petitioners in the said I.A are not representatives of Karundevanpalayam and Thambiranvalasu. In Karundevanpalayam village, there are 150

families and in Thambiranvalasu village, there are 55 families. The total population of the villages comes about 800. The documents filed along with the plaint are forged by the respondents 1 & 2 herein and its genuineness could be proved only if they are examined individually. The petitioners herein as plaintiffs have filed a suit in O.S.No.570/2009 and I.A.No.946/2009 in respect of Vinayagar and Makaliyamman Temple and obtained the interim injunction against the respondents therein. The respondents 1 & 2 herein should implead all the objectors who have appeared before the court and filed their affidavits, in the application filed under Order 1, Rule 8 C.P.C, otherwise the application should have been dismissed.

5.After perusing the records, the Learned Judge has partly allowed the said Interlocutory application by permitting the 1st respondent herein to sue for himself and for his supporters residing at Karundhevanpalayam and the 2nd respondent herein is permitted to sue for himself and for the village public residing at Thambiranvalasu and the petitioners herein / defendants are permitted to sue for themselves and for the objectors and other village public of Karundevanpalayam and amend the cause title of the plaint. As against the said order, the present Civil Revision Petition has been

filed.

6.The Learned Counsel for the petitioner submitted that the trial court has failed to implead all the objectors as a party to I.A.No.169/2013 and in the absence of non-impleadment of all the objectors in the I.A who were all present before the lower court and submitted their objection, the petition filed by the respondents 1 & 2 herein under order 1, rule 8 C.P.C should be dismissed. In support of his contentions, the learned counsel for the petitioners herein has relied upon the Judgment reported in 2007(1) MLJ 115. In the said Judgment it is held in para 6 that

“Though there is no need to decide the compliance of the said provisions in this revision, as rightly pointed out, in view of the claim of the proposed parties in respect of the subject matter of the property, I am of the view that their presence in the suit would ultimately help the residents of Uppupalayam Village. These materials have not been considered by the Learned District Munsif, Kangayam and therefore, I am inclined to accept the claim of the petitioner. Taking note of the fact that the property in question viz., Pavadi is in existence and is being used by

all the villagers, only by participating in the suit, it would be possible for them to highlight their stand. However, it is needless to mention that it is for them to substantiate their plea/defense at the time of trial.”

7.The learned counsel for the petitioners herein has further relied on the following Judgment reported in 2011(1) Law Weekly 32. In this Judgment, the Learned Judge after referring the Judgment of the Hon’ble Full Bench, held in Para 13 that

“Be that it may, if the object behind Order 1 Rule 8 of CPC is looked into, that a person who either supports or oppose the claim of the plaintiff should be heard in the matter since a decree passed in a suit in a representative capacity may bind the person who is not actually impleaded as party defendant by name”.

8.Further the learned counsel for the petitioners herein has relied on the following Judgment reported in 2014(5) LW 56 to strengthen his case. In the said Judgment it is held in Para 9 that

“from a perusal of the above said provision, it is abundantly clear that the purpose of issuing public notice

under Order 1 Rule 8 of 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 anyone has 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, without driving them to file petitions on their own to get themselves impleaded 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”.

All the above said Judgments are squarely applicable to the facts of the present case and therefore I am in full agreement with the Judgments relied on by the learned counsel for the petitioners herein.

9.Per contra, the learned counsel for the Respondents 1 & 2 herein has relied upon the following Judgment reported in 2014(3) Law Weekly 632. In the said Judgment it is held in Para 11 that

“The Learned Judge also held in categorical terms that the proceedings would become unwieldy, if 151 persons were impleaded as party defendants and if they were impleaded, the proceedings in the suit would be unreasonably prolonged and the suit could not be disposed of in the near future”. This Judgment referred by the learned counsel for the respondents 1 & 2 herein will not support their case. Further the Judgment referred by the learned counsel for the petitioners herein is followed by the Judgment of the Hon’ble Full Bench and the same will prevail over the Judgment of the Learned Single Judge.”

10.I have carefully considered the rival submissions on either side. On perusal of records it reveals that on the date of first hearing in this Interlocutory application, there are 131 objectors were present and requested the lower court to implead them as a defendants and

the case was adjourned to 28.3.13. On 28.03.2013, 48 objectors were filed their objection to the petition filed under order 1, rule 8 C.P.C. But the respondents 3 to 5 herein and 10 to 12 in the said I.A made an endorsement stating that since suit is based for public cause and therefore they have no objection to allow the petition seeking permission to file the suit on a representative capacity. On 17.4.2013 60 supports of the plaintiffs / respondents 1 & 2 herein filed affidavits and the same were recorded by the lower court. When there are about 131 objectors appeared before the lower court in the first hearing of the case and requested the court to implead them as defendants in the suit and on the next hearing of the case, there are 48 persons filed their affidavits, as per the dictum laid down in 2011(1) Law Weekly 32 & 2014(5) LW 56 the lower court need not hear the persons having no objection. On the other hand, persons who have objections have appeared before the court and filed their objections. When objections are raised and filed, it is the duty of the plaintiffs to make them as party-defendants, without driving them to file petitions on their own to get themselves impleaded as party-defendants. That being the legal position, the court below is not justified in holding that 1st plaintiff is permitted to sue for himself and for his supporters residing at Karundhevanpalayam and the 2nd plaintiff is permitted to sue for

himself and for the village public residing at Thambiranvalasu and the defendants are permitted to sue for themselves and for the objectors and other village public of Karundevanpalayam and amend the cause title of the plaint.

11. In the present case, the most of the objectors have filed their affidavits against the plaintiffs. But admittedly the objectors were not heard in the petition filed under Order 1, Rule 8 of C.P.C. Hence the objectors are necessary parties to the suit for the purpose of deciding the representative suit. The finding of the lower court that if 48 objectors are impleaded in the suit, it would cause heavy expenses to both parties and too many complications would arise and inordinate delay would be caused is not sustainable. In the present case, it is seen that the respondents 1 & 2 herein have not complied with provisions Order I Rule 8 of C.P.C by impleading the objectors as defendants.

12. In view of the foregoing discussions:

(a) this civil revision petition is allowed and the Fair and Decreetal order dated 29.04.2013 passed in I.A.No.169 of 2013 in O.S.No.64 of 2013, on the file of the Additional District Munsif Court,

Erode, is hereby set aside.

(b) the trial Court namely the Additional District Munsif Court, Erode is hereby directed to pass orders in I.A.No.169 of 2013 filed under Order 1 Rule 8 of CPC afresh after affording opportunities to both parties as well as impleading objectors in the suit within a period of two months from the date of receipt of a copy of this order.

13.In the result this C.R.P is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2017

vs

Index:Yes

Internet:Yes

To

The First Additional District Munsif Court,
Erode.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery Order made in
CRP(PD)No.3247 of 2013
and
M.P.No.1 of 2013**

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