

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.532 of 2015

1.Ramachandran
2.V.P.Murugesan
3.Paramasivam
4.Kotteeswaran
5.Selvaraj

.. Petitioners

Vs.

1.R.Kamaraj
2.K.K.Palanisamy
3.K.K.Appavu
4.Selvam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 17.06.2014 made in I.A.No.1344 of 2013 in O.S.No.528 of 2013 on the file of the Additional District Civil Judge, Namakkal.

For Petitioners : Mr.P.Paranjothi

For Respondents : Mr.N.Umapathi

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ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 17.06.2014 made in I.A.No.1344 of 2013 in

O.S.No.528 of 2013 on the file of the Additional District Civil Judge, Namakkal.

2.The petitioners are defendants and respondents are plaintiffs in O.S.No.528 of 2013 on the file of the Additional District Civil Judge, Namakkal. The respondents filed the said suit against the petitioners for permanent injunction against the Konur Village Mudaliar community, Namakkal Taluk and District. The petitioners shown as defendants for themselves and as the representative of Konur village, Mudaliar community. Along with the suit, the respondents filed I.A.No.1344 of 2013 under Order 1 Rule 8 of C.P.C for permission to sue the petitioners and their community people in representative capacity. They also filed application for injunction pending suit. Suit was numbered and exparte injunction was granted and notice was ordered in I.A.No.1344 of 2013 filed under Order 1 Rule 8 of C.P.C for permission to sue the petitioners and their community people in representative capacity. According to the respondents, there is an enmity between the Mudaliar and Gounder community and there is a dispute with regard to the pathway XY mentioned in the plan filed along with the plaint. The respondents and their ancestors from time immemorial are using the said pathway. The people from Mudaliar

community are trying to block the pathway XY and are trying to cut down the trees belonging the respondents and are threatening to destroy Septic tank and tank for rain water harvesting. For the above reason, the respondents have filed the above suit.

3.The petitioners entered appearance and filed counter affidavit in I.A.No.1344 of 2013. According to the petitioners, the respondents ought to have first obtained the permission to sue in a representative capacity and then only filed the suit. The suit filed without permission is not maintainable and is liable to be dismissed. The petitioners are not elders or representatives of their community. There are elders of the community and the respondents without any reasons impleaded the petitioners as representatives of their community according to their whims and fancies. The respondents have not stated what is the common interest which enables them to file the suit in a representative capacity against Mudaliar community.

4.The learned Judge considering the averments in the affidavit, counter affidavit and judgments relied on by the counsel for the respondents, allowed the application on the ground that there is no prohibition for granting permission under Order 1 Rule 8 of C.P.C after

the suit was taken on file. The learned Judge also held that paper publication and notice was affixed in the village office as well as tom-tom was effected. The people from mudaliar community have not appeared and petitioners have not expressed their unwillingness to represent the community and the dispute between the two community is common to all the people of two community.

5. Against the said order dated 17.06.2014 made in I.A.No.1344 of 2013 in O.S.No.528 of 2013, the petitioners have come out with the present Civil Revision Petition.

6. The learned counsel for the petitioners reiterated the averments in the counter affidavit filed in the application and in support of his contentions, relied on the judgment reported in **(2013) 8 MLJ 585 (S.R.Nanda Kishore Vs. Body of Villagers of No.29, Mambakkam Village, Chengalpattu Taluk and others):**

"30. When the suit was filed against the elected village panchayat of Mambakkam village, three individuals of the said village cannot represent the entire village people and further, it is mandatory on the part of the plaintiff to follow the mandatory procedure, as contemplated under Order 1 Rule 8 of the Code of Civil Procedure. However, without obtaining leave from the

Court below, the suit was filed by three individuals of the village, as if they represent the people of the village against the village panchayat, represented by its elected President."

7.Per contra, the learned counsel for the respondents reiterated the averments in the plaint, affidavit filed in support of the above application and relied on the judgment relied on by the counsel for the respondent before the Trial Court. The learned counsel for the respondents further contended that after suit is taken on file, the permission under Order 1 Rule 8 of C.P.C can be granted and submitted that in 1(a) of the Order 1 Rule 8 of C.P.C, a word used is "may" and therefore, obtaining leave under the said provision is not mandatory and is only directory.

8.Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record and judgment relied on by the learned counsel for the petitioners.

9.Point for consideration in the present Civil Revision Petition is whether before the suit is taken on file, leave under Order 1 Rule 8 of C.P.C has to be obtained or not.

10. Order 1 Rule 8 of C.P.C 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 a 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.

Explanation.—For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the person on whom behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

11. From reading of the provision in Order 1 Rule 8 of C.P.C, the above provision does not prohibit the Court to grant leave subsequently or the Court can take the suit on file only after permission under Order 1 Rule 8 of C.P.C is granted. The two judgments relied on by the learned counsel for the respondents before the learned Judge, mentioned in the impugned order squarely shows

that leave can be granted even after the suit is taken on file by numbering the suit. The judgment relied on by the learned counsel for the petitioners is not applicable to the facts of the case as in that case, no leave was obtained by the plaintiff to institute the suit in a representative capacity. Whereas, in the present suit, leave has been granted to sue the entire community of the petitioners in a representative capacity. In view of the same, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 17.06.2014 made in I.A.No.1344 of 2013 in O.S.No.528 of 2013.

12.At the same time, this Court takes notice of the fact that learned Judge granted exparte interim injunction before leave was granted to the respondents and appointed the Advocate Commissioner. In the two judgments relied on by the counsel for the respondents before the learned Judge, it has been held that only after leave was granted, enquiry in the suit can be taken up. In the present case, the learned counsel for the petitioner contended that an exparte injunction was granted and order obtaining the appointment of Advocate Commissioner passed before leave was granted to the respondents to sue the petitioners in a representative capacity. In view of the above

facts, the exparte injunction granted by the learned Judge is suo motu raised and order appointing the Advocate Commissioner is set aside. The learned Judge is directed to consider both the applications on merits after hearing both the petitioners and respondents and pass orders in accordance with law.

13. With the above direction, the Civil Revision Petition is closed.

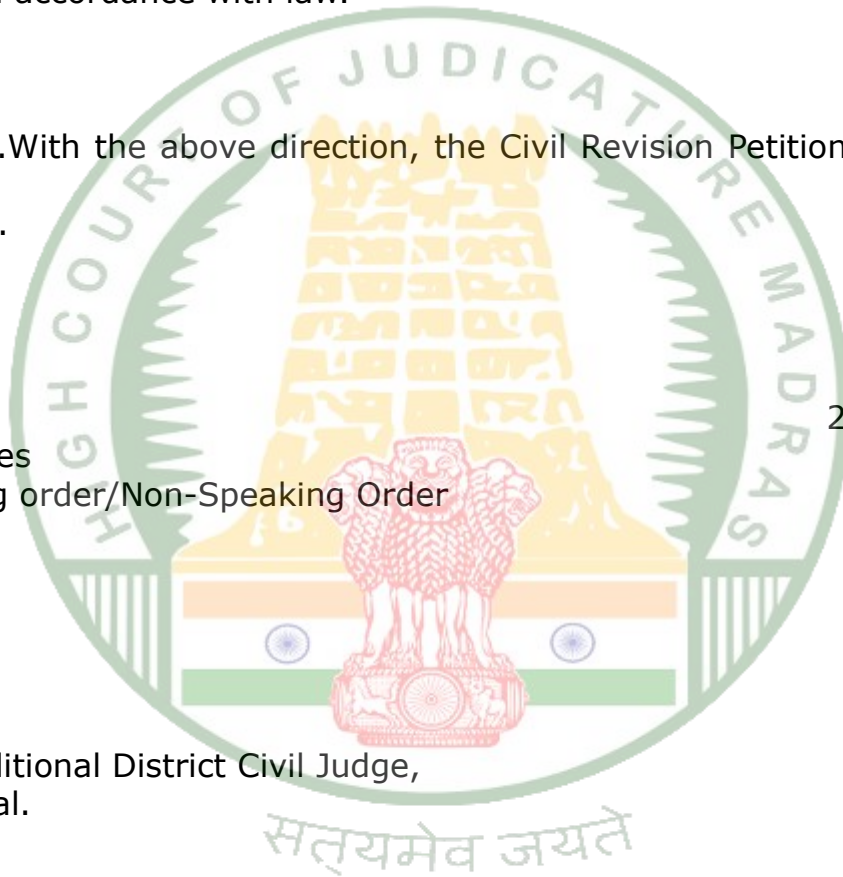
No costs.

Index: Yes
Speaking order/Non-Speaking Order
gsa

24.01.2018

To

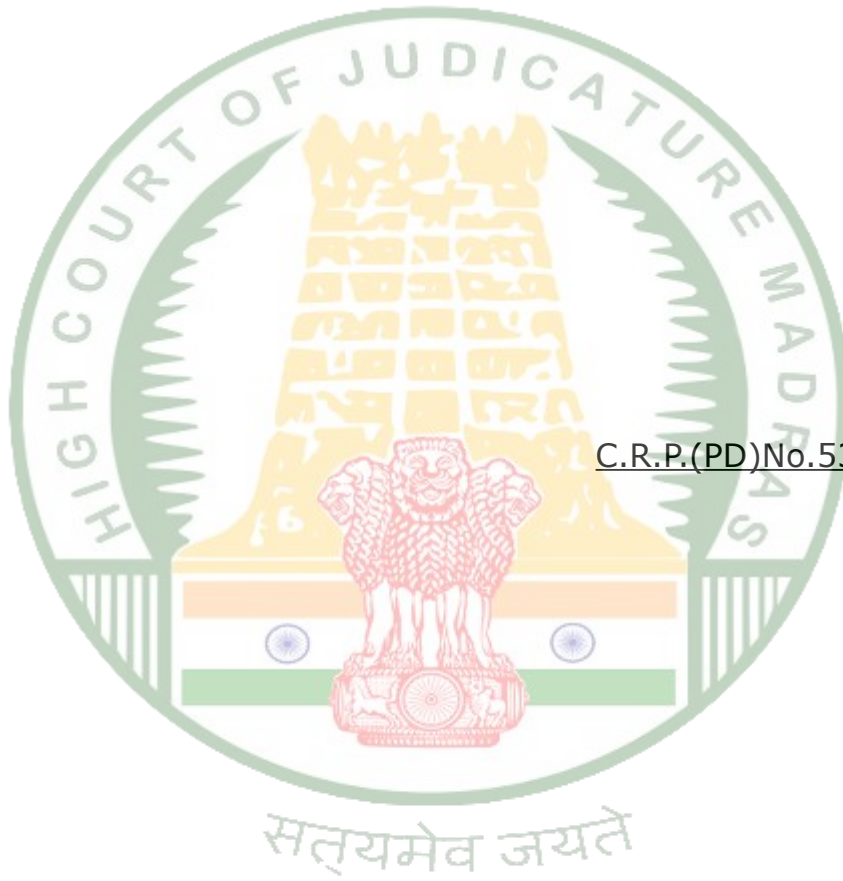
The Additional District Civil Judge,
Namakkal.



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V.M.VELUMANI,J.

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