



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **16.08.2018**

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P. (NPD) (MD) .No.1424 of 2018

and
C.M.P. (MD) No.6135 of 2018

WEB COPY

- 1.L.Krishnakumar
- 2.Y.Faizal
- 3.P.Chandiran
- 4.Rushal de cruz
- 5.M.Jeevanantham
- 6.Abdul Kadar
- 7.M.Sugumar
- 8.Selva Priya
- 9.Sangeetha
- 10.J.Moorthy
- 11.Elango
- 12.Maran
- 13.Tamilselvi
- 14.Pandiammal
- 15.M.Kumar
- 16.P.Magudapathy
- 17.S.Venkatesh
- 18.M.Mariappan
- 19.Muruganantham
- 20.Senthilmurugan
- 21.Muthuraj
- 22.Dheivam
- 23.Rajkumar
- 24.Ramanathan
- 25.Usharani
- 26.Venkatachalam
- 27.P.Arulkumaran
- 28.K.Arunachalavel
- 29.C.Guruprasad
- 30.C.Meenakumari
- 31.M.Balaguru
- 32.S.B.Sivakumar
- 33.P.Seenivasan
- 34.Jahir Basha
- 35.M.Mohammed Nowsath
- 36.S.Samsudeen
- 37.V.Shakthi Venkatesh
- 38.B.Saranraj
- 39.B.Naveen Kishore
- 40.V.Deepika
- 41.V.Niveetha
- 42.K.Karthikeyan



43.K.Saravanamurugan
44.M.P.Chinna Murugan
45.M.Samayamuthu
46.S.Sathishkumar
47.M.Rajendran
48.S.Vinoth Kumar
49.J.Parthasarathy
50.I.Mohammed Sameer
51.K.S.Gopalakrishnan
52.J.Prabakaran
53.F.J.Jerome Jeyakumar
54.S.Nijamudeen
55.K.S.Vellaichamy
56.V.Purushothaman
57.H.Mohammed Iqbal ... Petitioners/Objectors/3rd parties
Vs.

1.P.V.Surendran
2.S.Manickam
3.The Victoria Edward Hall Society
Through its Secretary, Dr.I.Ismail
4.I.Ismail ...3rd & 4th Respondents/Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 03.04.2018 passed in I.A.No.930 of 2017 in O.S.No.161 of 2017 on the file of VI Additional District Court, Madurai and dismiss the suit.

For petitioners : Mr.V.Meenakshi Sundaram
For R1 : Mr.S.Srinivasa Raghavan
For R2 : No Appearance
For R3 and R4 : Mr.M.Rajaraman

O R D E R

The respondents 1 and 2 filed O.S.No.161 of 2017 on the file of VI Additional District Judge, Madurai, seeking declaratory and prohibitory relief against the management of the Victoria Edward Hall Society. This suit was filed in a representative capacity. The revision petitioners herein lodged their objections in I.A.No.930 of 2017 taken out by the plaintiffs. The Court below while permitting the plaintiffs to sue in a representative capacity, by allowing I.A.No.930 of 2017, directed the revision petitioners to file independent applications under Order 1 Rule 10 of CPC, for impleading themselves as defendants. This is

<https://hcmis.hcmjcd.in/hcmis/>

2.Heard the learned counsel on either side.



3. The counsel for the contesting respondents / plaintiffs submitted that it is not for the plaintiffs to implead the objectors as defendants. I concur with the said submission. Order 1 Rule 8(3) of CPC states that (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. In the present case, the claim of the plaintiffs is that the suit has been instituted for the benefit of the revision petitioners also. This claim is contested by the revision petitioners and they lodged their objections. The Court below rejected the objections lodged by the revision petitioners. But then, once the objections are rejected, the next course to be adopted is, to make them as defendants in the suit. Ofcourse, as rightly contended by the counsel of the contesting respondents/ plaintiffs, it is not for the plaintiff to implead them as defendants. But then, a duty is cast on the Court to straight away implead them as defendants in the suit.

5. In fact, the revision petitioners herein, by lodging their objections following the public advertisement taken out by the plaintiffs, have in substance applied to the Court to make them a party to such suit.

6. A learned Judge of this Court, in the decision reported in 2011 (1) LW 32 held as follows:

*'13. Be that it may, if the object behind Order 1 Rule 8 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. This Court in **The Victoria Edward Hall vs. M. Samraj [2001(3) ctc 129]**, in paragraph No.11, has held as follows:*

'11.....

It is relevant to point that a duty is cast on the Court to follow the procedure prescribed under Order 1, Rule 8 C.P.C. Irrespective of the fact as to whether the defendant or defendants present before the Court to safeguard the interest of the persons who are not present before Court a petition under Order 1, Rule 8, CPC for grant of leave of Court to file a suit in representative capacity has to be filed by the first respondent



Therefore, if the instant case is looked into from the said angle, interest of justice requires that the persons who are names 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 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. From 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 is 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.''

7. Following the aforesaid decision, this Court holds that ends of justice would be met only if the revision petitioners are impleaded as defendants.

8. The learned counsel for the revision petitioners gives an undertaking, based on the instructions of the revision petitioners that the revision petitioners would contest the suit as one block and would made their submissions in one voice and that their proceedings will be conducted through one counsel.

9. Recording this undertaking, the learned VI Additional District Judge, Madurai, is directed to implead the revision petitioner as defendants in the suit.

10. With this direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CO)



To

The VI Additional District Judge, Madurai.

+1cc to Mr.D.Nalla Thambi, Advocate Sr.No.79028

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.79002

PNN

VB/SKN/SAR4/19.09.2018/5P/4C

**ORDER MADE IN
C.R.P. (NPD) (MD) .No.1424 of 2018
and
C.M.P. (MD) No.6135 of 2018
16.08.2018**