



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) No.1815 of 2016

and

C.M.P. (MD) .No.8736 of 2016

A.Lagumayya

.. Petitioner/ 1st Respondent/
Plaintiff

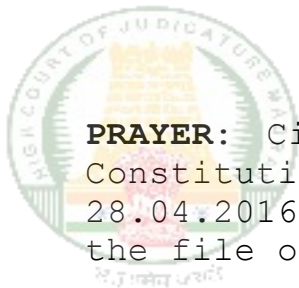
vs.

1.V.Loganathan
2.K.Barathiraja
3.P.Veraiyan
4.R.Mookkan
5.R.Uthappan
6.P.Ganesan
7.D.Vadivel
8.T.Krishnan
9.K.Azhagarsamy
10.P.Thangapandi
11.P.Kamaraj
12.P.Thangavel
13.M.Kasi
14.S.Perumal
15.R.Sivaraman
16.A.Uthappan
17.S.Nagendran
18.N.Uthappan
19.P.Palanichamy
20.K.Dhanavel
21.N.Seenichamy
22.K.Selvaraj
23.P.Jeyaram
24.V.Karthickraja
25.K.Chidambaram
26.S.Azhagar
27.V.Vellimalai
28.A.Perumal

.. Respondents 1 to 28 /Petitioners /
Third parties

29.M.Mallaiyan
30.P.Chennaiyan

.. Respondents 29 & 30/
Respondents 2 &3/ Defendants



PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 28.04.2016 passed in I.A.No.556 of 2015 in O.S.No.97 of 2015, on the file of the District Munsif Court, Nilakkottai.

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For Petitioner : Mr.J.Barathan
For Respondents 2 to 9,
11 to 18, 20 to 28 : Mr.M.Vetrivelmurugan
For Respondent No.10 : Expired
For Respondent No.19 : Out of Station
For Respondents
1, 21 and 30 : Tapal not yet returned
For Respondents 29 & 30 : No appearance

ORDER

One Lagumayya filed O.S.No.97 of 2015 before the District Munsif Court, Nilakottai, for restraining the defendants from unlawfully demolishing or damaging the compound wall of the suit temple. The suit was filed in a representative capacity. The said Lagumayya took out an application under Order 1 Rule 8 of CPC to obtain leave of the Court below. The said leave application was opposed by some of the respondents herein. But, notwithstanding such opposition, leave was granted and the said Lagumayya was allowed to conduct the suit in a representative capacity. Thereafter, the respondents 1 to 28 herein filed I.A.No.556 of 2015 for impleading themselves in the suit proceedings. The said IA was allowed by order, dated 28.04.2016 and respondents 1 to 28 were impleaded as defendants 3 to 30 in the suit. Questioning the correctness of the said order, this Civil Revision Petition has been filed.

2. During the pendency of this revision petition, the plaintiff passed away. When this was pointed out by the learned counsel appearing for the impleaded defendants, the learned counsel appearing for the revision petitioner took an adjournment. Thereafter, he filed CMP.(MD).SR.No.33688 of 2018 for substituting one Malaiyan in the place of the original revision petitioner Lagumayya to prosecute the civil revision petition.

3. The learned counsel appearing for the impleaded defendants raised a technical objection stating that the said Malaiyan had not been formally substituted in the place of the original plaintiff in the suit before the Court below. This Court is conscious of the fact that this is a suit in a representative capacity and that therefore, the principle of abatement following the demise of the plaintiff will not arise. A person, who has the same interest as that of the original litigant and who is willing to espouse the cause is entitled to get substituted in the place of the deceased party, of course with the leave of the Court.

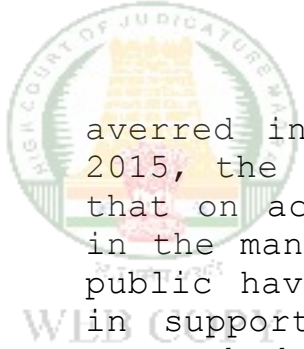


4. I am satisfied that Lagumayya had filed the suit to protect the compound wall of the temple, because he was acting as a Poosari. It is submitted that Malaiyan stepped into the shoes of the Lagumayya as Poosari. Therefore interest of justice will be better served by substituting Malaiyan in the place of the original revision petitioner. This Court *suo motu* substitutes Malaiyan in the place of Lagumayya.

5. It is also directed that the trial Court will permit Malaiyan to get himself substituted in the place of the original plaintiff Lagumayya and conduct the suit proceedings in a representative capacity. It is made clear that since the averments to be observed before grant of leave in terms of Order 1 Rule 8 of CPC have already been complied in this case, it is not necessary to re-do the very same exercise. Of course, it is open to the parties to raise any objection with regard to the proprietary or competence of the substituted party to continue. The said proceedings and if any such application is taken out in this regard, it is the duty of the Court below to dispose of the same in accordance with law, notwithstanding the fact that this Court had permitted Malaiyan to come in the place of the original revision petitioner.

6. Now, the question arises is whether the Court below was justified in allowing the impleading application filed by the respondents 1 to 28. The learned counsel for the revision petitioner drew the attention of this Court to Order 1 Rule 8(3) of CPC. He pointed out that the persons, who wanted to get impleaded in the suit as defendants must specifically, point out as to how their interests are infringed or would be affected. He drew the attention of this Court to a Division Bench decision reported in **AIR 1994 Orissa 21**. It was held by the Hon'ble Orissa High Court that in a representative suit, a party seeking impleadment should satisfy the Court that the person, who had filed the suit would act prejudicially to his interest. Impleadment under Sub Rule 3, though discretionary need not be granted merely on asking.

7. The learned counsel for the revision petitioner contended that in this case, the affidavit filed by the impleaded parties in support of the impleading application is completely silent on this aspect. He characterised the order of the learned Trial Munsif as rather non-speaking. This Court is unable to agree with the revision petitioner's contention. I went through the plaint averments including the prayer. The issue concerns the compound wall of the suit temple. The impleaded parties complain that while they are also worshipers of the very same idol, their grievance is that the compound wall has been so constructed as to encroach upon the Government poramboke land also. Though it is not



averred in the affidavit filed in support of the I.A.No.556 of 2015, the learned counsel for the contesting respondents submitted that on account of the construction of the temple compound wall, in the manner it has been done, the pathway rights of the general public have been affected. In paragraph 3 of the affidavit filed in support of I.A. No.556 of 2015, it has been categorically averred that the suit property apart from the temple site includes the Government poromboke land and that it belongs to the entire village community. Therefore, the learned counsel for the revision petitioner may not be right in his contention that the interest of the impleaded parties has not been projected. I am convinced that it has been sufficiently projected. If a decree as sought for is granted, definitely, the land, in which the general public is having interest would also be included in it. That is why, the trial Munsif rightly held that the impleaded parties are also entitled to be heard.

8. Further, the learned counsel for the revision petitioner expressed the apprehension that this would become an unending process. There is considerable force in the said apprehension. Therefore, this Court put a direct question to the learned counsel for the impleaded defendants as to whether the impleaded defendants would speak in one voice. When the matter came up for admission this morning, the learned counsel for the revision petitioner took a pass over for contacting his counter part, who is appearing before the Court below and came back in the afternoon and stated that the impleaded defendants would defend the suit as one block and in one voice. They will file one written statement. This should allay the apprehension expressed by the learned counsel for the revision petitioner. Sustaining the order passed by the Court below and recording the undertaking given by the impleading defendants, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is dismissed.

9. Since the 10th respondent has passed away in the meanwhile, it is not necessary to bring his legal representatives on record.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The District Munsif, Nilakottai.



2. The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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+1cc to Mr.M.Vetrivelmurugan, Advocate Sr.No.78667
+1cc to Mr.T.R.Jeyapalam, Advocate Sr.No.78847

PJL

VB/RSK/SAR2/10.09.2018/5P/6C

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