



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2018

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) .Nos.581 & 747 of 2016 (PD)

and

C.M.P. (MD) .No.3643 of 2016

in

C.R.P. (MD) .No.747 of 2016

C.R.P. (MD) .No.581 of 2016

1.Ramasamy Chettiyar

2.Ranagasamy

(Petitioners for themselves and representatives of
24 Manai Telungu Chettiyargal Uravinmurai at
Lingapuram Panthalkudi Village)

... Revision Petitioners / Respondents 1 & 2/
Defendants 1 & 2

Vs.

1.So.Srinivasan

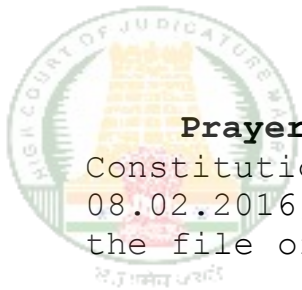
2.Sundara Raj ... Respondents 1 & 2 / Petitioners /
Plaintiffs

(1 & 2 respondents for themselves and Representatives of
Agriculturists of 24 Manai Telungu Chettiyargal
Uravinmurai at Lingapuram Street, Panthalkudi Village,
Aruppukottai Taluk, Virudhunagar District)

3. Panthalkudi Panchayat Board,
Represented through its President,
Panthalkudi.

4. Tamil Nadu Electricity Board - Panthalkudi,
Represented through its Junior Engineer,
Panthalkudi.

... Respondents 3 & 4/ Respondents 3 & 4
Defendants 3 & 4



Prayer: Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order, dated 08.02.2016, passed in I.A.No.1500 of 2015 in O.S.No.283 of 2015 on the file of the District Munsif Court, Aruppukottai.

WEB COPY

For Petitioners : Mr.V.Perumal

For Respondents : Mr.S.Natarajan for R1 & R2

Mr.J.Gunaselan Muthiah for R3

Mr.M.Mohan Babu for R4

C.R.P. (MD) .No.747 of 2016

1.So.Srinivasan

2.Sundara Raj

(Petitioners for themselves and Representatives of
Agriculturists of 24 Manai Telungu Chettiyargal
Uravinmurai at Lingapuram Street, Panthalkudi Village,
Aruppukottai Taluk, Virudhunagar District)
... Petitioners/Petitioners/Plaintiffs

Vs.

1.Ramasamy Chettiar

2.Rengasamy

(1 & 2 Respondents for themselves and representatives of
24 Manai Telungu Chettiyargal Uravinmurai at
Lingapuram, Panthalkudi Village),

3.Panthalkudi Panchayat Board,
Represented through its President,
Panthalkudi.

4.Tamil Nadu Electricity Board-Panthalkudi,
Represented through its Junior Engineer,
Panthalkudi.

... Respondents/Respondents/Defendants

Prayer: Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order, dated 08.02.2016, passed in I.A.No.1497 of 2015 in O.S.No.283 of 2015 on the file of the District Munsif Court, Aruppukottai, insofar as imposing conditions therein.



For Petitioners : Mr.S.Natarajan

For Respondents : Mr.V.Perumal for R1 & R2

Mr.G.Muthukannan for R3

Mr.M.Mohan Babu for R4

WEB COPY

Orders Reserved on	17.11.2017
Orders Pronounced on	29.01.2018

COMMON ORDER

For the sake of convenience, the parties are referred to as per their rank in the Court below.

2. Claiming themselves as representatives of Agriculturists of 24 Manai Telungu Chettiyargal Uravinmurai at Lingapuram Village, Panthalkudi, the respondent Nos.1 and 2 in C.R.P.(MD).No.581 of 2016 and the petitioners in C.R.P.(MD).No.747 of 2016 / plaintiffs, have filed a suit in O.S.No.283 of 2015 before the District Munsif Court, Aruppukottai, against the revision petitioners in C.R.P.(MD).No.581 of 2016 and the respondents 1 and 2 in C.R.P.(MD).No.747 of 2016 / defendants, who are the representatives of 24 Manai Telungu Chettiyargal Uravinmurai at Lingapuram Street, Panthalkudi Village, Aruppukottai Taluk, Virudhunagar District; Panthalkudi Panchayat Board and Electricity Board. The suit is filed for permanent injunction, restraining the defendants 1 and 2 from interfering with the use of the suit property by the plaintiffs as Kalam (Thrash ground); the 3rd defendant from issuing an order permitting the defendants to put up any construction and the 4th defendant from giving electricity connection for the construction of any building on the suit property and for mandatory injunction to the defendants 1 and 2 to close the pit dug up in the land in question within a stipulated time.

3. Pending suit, the plaintiffs had filed two interlocutory applications ie., one in I.A.No.1497 of 2015 under Order 1 Rule 8 CPC, seeking permission of the Court to file the suit in representative capacity and another in I.A.No.1500 of 2015 for appointment of an Advocate Commissioner to find out the physical features. After contest, both the applications were allowed by the Trial Court. While allowing the application in I.A.No.1497 of 2015, the Trial Court imposed a condition that the plaintiffs should implead all the objectors as defendants in the suit. Aggrieved against the condition imposed in I.A.No.1497 of 2015, the plaintiffs have filed C.R.P.(MD).No.747 of 2016. Aggrieved against the order made in I.A.No.1500 of 2015, the defendants 1 and 2 have filed C.R.P.(MD).No.581 of 2016.



4. The learned counsel for the plaintiffs would submit that the Court below has rightly allowed both the interlocutory applications filed by the plaintiffs. But, while allowing the interlocutory application filed seeking permission of the Court to file the suit in representative capacity, the trial Judge has erroneously imposed a condition that the plaintiffs should implead 265 persons/objectors, which is unwarranted. He would further submit that the very same counsel, who appeared for the defendants in the suit, already filed vakalat for all those objectors. Hence, if the objectors wanted to be impleaded in the suit, they can do so and get themselves impleaded. Therefore, the direction given by the Trial Court to the plaintiffs to implead 265 objectors as a condition for allowing the interlocutory application is impracticable. The defendants in the suit already dragging on the injunction petition filed by the plaintiffs and at the same time, they are also proceeding with the process of putting up permanent construction. Only with a view to drag on the injunction petition, the defendants have instigated the alleged objectors. Hence, he prayed to set aside the order passed in I.A.No.1497 of 2015 in respect of the said condition alone. In support of his arguments, the learned counsel relied on the following decisions:-

- i) (2013) 4 MLJ 715 (N.Bheeman v. N.Bhojan)
- ii) 2014-3-L.W.626 (F.J.Jerome & Ors v. P.Vijayakumar & Ors)

5. The learned counsel for the defendants would submit that the trial Court has rightly allowed the interlocutory application filed by the plaintiffs seeking permission of the Court to file the suit in representative capacity with a condition to implead the 265 objectors as defendants in the suit. In support of his submission, he relied on the judgment reported in **2015 (1) MWN (Civil) 505 (Vellaigounder @ Kuppu v. Chinnasevi Gounder)**.

6. The learned counsel for the defendants would next submit that the plaintiffs have filed the interlocutory application I.A.No.1500 of 2015 for appointment of an Advocate Commissioner only to protract the proceedings and they have filed the said application only to prove their possession, which is not permissible in law. The learned counsel would further submit that the members of the said Community have filed objections against the plaintiffs for filing the suit in the representative capacity on behalf of their Community and hence, they ought to have been impleaded and given an opportunity to put forth their objections before appointing an Advocate Commissioner in I.A.No.1500 of 2015. The learned counsel for the defendants further submitted that one Vasantha has filed a suit in O.S.No.263 of 2015, claiming right over the very same suit property, in which an Advocate Commissioner was appointed and after measuring the suit property with the help of Surveyor and Revenue authorities on 12.11.2015, the said Advocate Commissioner has filed a report and the same may



be adopted in this case and hence, the appointment of an Advocate Commissioner does not arise in this case. Thus, he prayed to set aside the order passed in I.A.No.1500 of 2015.

7. I have carefully considered the rival submissions made by the learned counsel on either side and also perused the materials available on record.

8. Admittedly, in this case, in pursuant to the public notice issued under Order 1 Rule 8 C.P.C., about 265 persons have approached the Court below and filed their objections, objecting to the filing of the suit by the plaintiffs in the representative capacity. While permitting the plaintiffs to file the suit in the representative capacity, the trial Court has imposed a condition to implead those objectors as defendants in the suit. According to the plaintiffs, it is an onerous condition and impleadment of 265 persons is not practically possible.

9. In similar circumstances, when the questions ie., whether the objectors, who have appeared before the Court in pursuant to the Public Notice issued under Order 1 Rule 8 C.P.C. objecting to the filing of the suit by the plaintiffs in a representative capacity, have to be impleaded as party-defendants or not and as to whether the plaintiffs can be permitted to continue the suit in a representative capacity without impleading those objectors as party-defendants?, have arisen for consideration, a learned Single Judge of this Court has held in **2015 (1) MWN (Civil) 505 (Vellaigounder @ Kuppu vs. Chinnasevi Gounder)** paragraph Nos.8 & 9 as follows:

"8.Order 1 Rule 8 C.P.C. deals with the procedure in respect of the suit to be filed in a representative capacity. Under the said provision of law, it is contemplated that where there are numerous persons having the same interest in one suit, 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, who are interested. Sub-clause (2) of Rule 8 of Order 1 C.P.C. contemplates that the Court shall give notice of the institution of the suit to all persons so interested. Sub-clause (3) therein contemplates that any person on whose behalf the suit is instituted or defended, may apply to the Court to be made a party to such suit.

9. From a perusal of the above said provision, it is abundantly clear that the purpose of issuing public notice under Order 1 Rule 8 C.P.C. is to make the public aware that the suit is being instituted in a representative capacity by



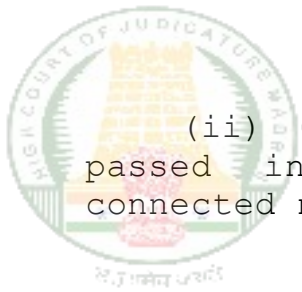
contending that the same is being instituted on their behalf. Thus, the idea behind such notice is to see as to whether anyone has any objection against those person/persons, who intend to file such suit in a representative capacity. Persons having no objection need not come to the Court and say that 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 objections 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."

10. The said decision is squarely applicable to the facts of this case and hence, the condition imposed by the trial Court directing the plaintiffs to implead all the objectors as party-defendants cannot be stated to be onerous. As they are having their own objections, as rightly held by the trial Court, they ought to have been impleaded as party-defendants. More over, the trial Court has also held that all the objectors have approached the Court through the counsel, who is representing the defendants 1 and 2 in the suit and therefore, no individual notice need be served and notice to the counsel is enough, which would practically reduce the delay in issuing notices to the individual parties. The decisions relied on by the learned counsel for the plaintiffs are not applicable to the facts of the present case. Therefore, all the contentions raised by the plaintiffs against the order passed in I.A.No.1497 of 2015 are rejected and thus, C.R.P.(MD).No.747 of 2016 is liable to be dismissed.

11. So far as the appointment of an Advocate Commissioner is concerned, as rightly contended by the learned counsel for the defendants, the said petition ought to have been considered after impleadment of the objectors and after giving an opportunity to the objectors and therefore, the order passed in I.A.No.1500 of 2015 is liable to be set aside and the petition is liable to be remitted back to the file of the trial Court.

12. In the result,

(i) C.R.P.(MD).No.581 of 2016 is allowed and the order passed in I.A.No.1500 of 2015 is set aside and the matter is remitted back to the file of the trial Court for fresh consideration, after providing sufficient opportunity to the objectors, who are to be impleaded as defendants.



(ii) C.R.P.(MD).No.747 of 2016 is dismissed and the order passed in I.A.No.1497 of 2015 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-I)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif ,
Aruppukottai.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.S.Natarajan , Advocate in SR No. 44452
+ 2 ccs TO Mr.V.Perumal , Advocate in SR No. 44514,44513

gcg

AE/SKN RSK/SAR3/27.02.2018/7P/7C

Common Order made in
C.R.P.(MD).Nos.581 & 747 of 2016 (PD)
29.01.2018