

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

A.No.8342 of 2019

in

C.S.Diary No.137021 of 2019

MS.DEEPA JAYAKUMAR,
New No.13, Old No.9,
Sivagnanam Street,
T.Nagar, Chennai 600 017. ...Applicant/Plaintiff

-Vs-

1. MR.A.L.VIJAY,
8th Avenue, Panaiyur,
Chennai - 600 116.

2. MR.VISHNU VARDHAN INDURI,
Lakshmi Cyber city,
'B' Block, 3rd Floor,
Kondapur, Hyderabad, Telangana.

3. MR.GOWTHAM VASUDEV MENON,
Poton Factory, New NO.205,
Old NO.114,1st Floor,
Lloyds Road,Royapettah,
Chennai-600 014. ...Respondents/Respondents

Application praying that this Hon'ble Court be pleased
to grant leave to sue against the Responents 1 and 2
/Defendants 1 and 2 in the above suit before this Court.

This Application coming on this day before this court
for hearing the court made the following order:

Reserved on : 12.11.2019

Delivered on : 26.11.2019

A.No.8342 of 2019
in C.S.D.No.137021 of 2019

K. KALYANASUNDARAM. , J

<https://hcservices.ecourts.gov.in/hcservices/>

Heard Mr.Thiyageswaran, learned counsel for the

applicant; Mr.Vijayan Subramanian, learned counsel for the respondents 1 and 2; Mr.Satish Parasaran, learned Senior Counsel, representing Mr.A.K.Raghavulu, learned counsel for the third respondent and perused the materials available on record.

2. The applicant is the plaintiff in the suit filed for declaration and permanent injunction and this application is filed seeking leave to sue against the defendants 1 and 2.

3. According to the plaintiff, the former Chief Minister of Tamil Nadu Dr.J.Jayalalitha is her aunt and as a niece, she had very close acquaintance with her during her life time. It is further stated that Dr.J.Jayalalitha is a well known public personality and has acquired very good name, image and reputation among the people of Tamil Nadu and all over the parts of India.

4. The applicant would further state that the defendants 1 and 2 have announced the production of a film on the biography of Dr.J.Jayalalitha and titled as "Thalaivi" in Tamil and "Jaya" in Hindi and the third defendant has announced to make a web serial of Dr.J.Jayalalitha without the consent of the applicant / plaintiff.

5. It is further stated that the defendants may portray Dr.J.Jayalalitha's personal life and the plaintiff's part in the life story in their own version, which may affect the plaintiff's family privacy. Further, any interpolation would affect the dignity of Dr.J.Jayalalitha and hence, it is necessary to check and confirm the story written by the defendants for the purpose of production of the movies.

6. In the application, it has been averred that the respondents 1 to 3 have announced the production of a bilingual film / web serial using the life history of Dr.J.Jayalalitha at Chennai within the jurisdiction of this Court and therefore the entire cause of action arose within

the jurisdiction of this Court. However, this application has been filed as an abundant caution as the respondents 1 and 2 are residing / caring on business outside the jurisdiction of this Court.

7. In the counter affidavit filed by the second respondent, it is stated that the movie "Thalivi" has no connection with the third respondent and the film is directed by the first respondent. Likewise, the second respondent has no connection with the web series that is taken by the third respondent. Hence, no cause of action arose to file a suit against the second respondent. It is further stated that several publications have been made in the past about the life story of Dr.J.Jayalalitha and therefore the question of privacy does not arise in this case.

8. Though the third respondent is not a party to the application, but a detailed counter has been filed contending that the suit is not maintainable. The applicant has filed a composite suit in respect of three different and distinct causes of action against three different parties without obtaining leave from this Court. The alleged cause of action does not arise from the same act or transaction so as to enable the applicant to file a composite suit.

9. It is the case of the third respondent that he is only a director of the upcoming web series tentatively titled as "Queen" and he is not the producer of the said web series. According to the third respondent, even though, it is alleged that the cause of action for filing the suit arose on 24.02.2019, there was an inordinate delay and laches in filing the suit, which was filed after a lapse of 9 months.

10. Mr.Thiyageswaran, learned counsel for the applicant while reiterating the averments made in the <https://hcservices.ecourts.gov.in/hcservices/> complaint submitted that the third respondent is not all a party to this application and hence, he has no right to

oppose the application. He further added that the documents annexed with the plaint and the averments made in the plaint would establish that all the defendants have announced the production of the film on the life history of Dr.J.Jayalalitha at Chennai, and to provide an opportunity to establish the case of the plaintiff, the application has to be allowed.

11. Mr.Vijayan Subramanian, learned counsel for the respondents 1 and 2 opposed the application contending that the plaintiff has no cause of action for filing the suit against the defendants.

12. Mr.Satish Parasaran, learned Senior Counsel appearing for the third respondent by placing reliance on the decision on of the Calcutta High Court in the case of **Ramendra Nath Ray vs. Brojendra Nath Dass and others reported in AIR 1918 Cal 858**, submitted that leave cannot be given to file a suit in view of mis-joinder of parties and cause of action. It is the submission of the learned Senior Counsel that the defendants 1 and 2 have no right or role over the web series produced by the third respondent and the third respondent does not have any right in the production of the movie "Thalaivi" in Tamil and "Jaya" in Hindi, which is produced by the second respondent. The suit is bad for mis-joinder and non-joinder of necessary parties. Hence, the applicant is not entitled to the leave sought for in this application.

13. A perusal of the above decision shows that a Single Judge of the Calcutta High Court took the view that the suit is barred by mis-joinder of parties and cause of action. When the matter was taken up on appeal, the Division Bench reversed the order of the learned Single Judge and allowed the appeal and held as follows:

".....The question next arises, whether the present suit has been constituted in conformity with Or.1, r.3. The

determining factors applicable here are, first, could the right to relief against the Defendants be said to be in respect of or arising out of (expressions obviously of wider import than relating to) the same act or transaction, and, secondly, would any common question of law or fact arise, if separate suits were brought. As regards the first test, there can in my opinion be not doubt that the right to relief against each of the Defendants is based upon the same act, namely, the alleged fraud of Brojendra Nath Das, and this so notwithstanding the fact that there may have been subsequent acts or transactions in which the different Defendants are individually concerned and which may enable them to raise distinct defences. As regards the second test, it is clear that if different suits were instituted, at least one common question of fact would arise, namely, the exact nature of the act imputed to Brojendra Nath Das, which would have to be investigated presumably on the same evidence separately adduced in the several suits. Here again, it is important to observe that the Code does not require that all the questions of law or fact which arise should be common to all the parties. The contention of the Respondents was, in fact, based upon two fallacious assumptions, namely, first, that the rules require that each of the Defendants should have been concerned in all the transactions, and secondly, that, if different suits were brought, no question would arise in which all the Defendants were not interested. There is clearly no foundation whatever for either of these assumptions [Cf. *Drincqbier v. Wood*]. There is further no basis for the hypothesis, put forward at one stage on behalf of the Defendants that questions of joinder of parties and causes of action are governed by different principles

according as the claim is founded on breach of contract or on tort; as Collins M.R. observed in *Bullock v. London General Omnibus Co.*, there is no reason for such a distinction. In my opinion the case before us is completely covered by Or.1, r.3. I may add that the underlying principles of this conclusion is in exact conformity with what has been the recognised rule in this Court in two well-known classes of cases, namely, first, suits by reversioners for recovery of the estate of the last full owner alienated by a limited or qualified owner during her period of possession and enjoyment, and, secondly, suit for possession by the real owner against holders under derivative titles from a trespasser as common source. The decision in *Ishan Chunder v. Rameswar* may be taken as representative of the former class of cases. On the other hand, the decision in *Nando Kumar v. Banomali*, where Hill, J., refers to the instructive cases of *Hodgins v. Hickson* and *Minet v. Johnson* may be taken as the type of the second class of cases. I do not feel pressed by the decisions in *Mullick v. Sheo Prasad* and *Sarala v. Saroda*, which ruled that under the Code of 1882 there was no provision for joinder of distinct causes of action against distinct Defendants. The Code of 1908 brings the rules on the subject in a line with the corresponding rules in England, and the object which the framers of the new Code had in view, would be completely frustrated, where the Courts to allow their effect to be qualified by reference to decisions under the Code of 1882, pronounced on provisions some of which, at any rate, have been omitted, or materially altered (see for instance secs.31 and 45 of the Code of 1882).

There is no force in the contention that grave inconvenience will be caused to some of the parties as they

will have to be present during the discussion of questions which specifically affect others alone. The remedy for any possible inconvenience on this ground is supplied by the provisions of Or.2, r.6, which authorises the Court to order separate trials of causes of action which though joined in one suit cannot be conveniently tried or disposed of together. As pointed out by Scott, C.J. in Vmabai v. Vitha, the Court is competent to direct the successive trial of the issues separately affecting different Defendants and to record interlocutory judgments thereon, to be made the basis of the final judgment at the conclusion of the trial of the whole case.

In my opinion, the suit as framed is not open to the objection on the ground of misjoinder of parties and causes of action and should consequently be tried on the merits. I agree that the appeal must be allowed with costs and the order of Mr. Justice Chitty reversed."

14. In my considered opinion, the above observation of the Division Bench, does not help the case of the respondents. In the instant case, it is specifically stated in the affidavit filed in support of the application that the defendants have announced production of the movie on the life story of Dr.J.Jayalalitha at Chennai on 24.02.2019, which has not been specifically denied by the respondents in their counter or in their arguments. At this juncture, it would not be appropriate to decide the merits of the main case on the basis of the defence raised by the respondents in their counter affidavits.

15. Therefore, considering the averments made in the affidavit and the submissions of the learned counsel for the applicant, this Court is of the opinion that the applicant is entitled to succeed in this application.

Needless to say that at appropriate stage, if the defendants come up with necessary application, that would be considered in accordance with law. Accordingly, this application is allowed.

Sd/.M.K.K.S.J.

26.11.2019

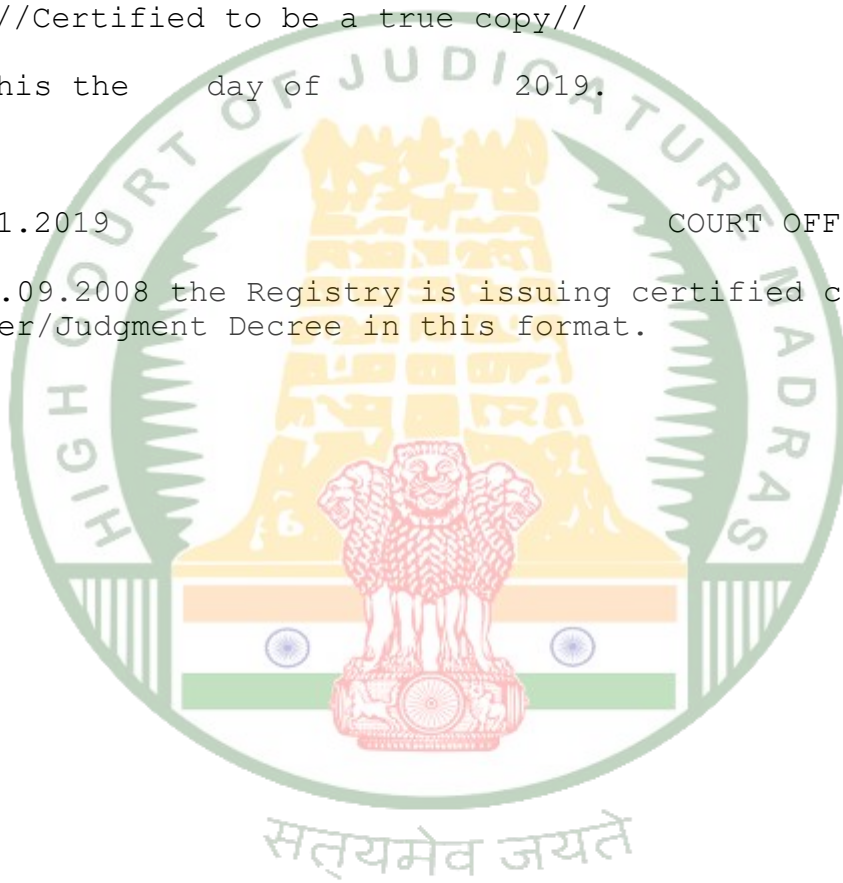
//Certified to be a true copy//

Dated this the day of 2019.

SU/27.11.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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