

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CRP [PD] .No.385/2019
& CMP.No.2650/2019

[Video Conferencing]

Meeran Maraikayar

..

Petitioner /
1st Plaintiff

Versus

1.Abdul Kathar
2.J.Mohamed Hussain
3.K.S.Samsudeen
4.E.Kacchii Moideen
5.M.Thameen
6.M.Mushthafa
7.A.Shahul Hameed
8.S.Aalavudeen
9.Nainar Mohammed

..

Respondents /
Defendants

10.Abdul Masjid Maraikayar
11.Kareem Maraikayar
12.Abu Sali
13.Abdul Razak
14.A.Shagul Hammeed
15.Thofiq
16.Mushtafa

17.Jaboorulla

.. Respondents /
Plaintiffs 2 to 9

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 03.07.2018 passed by the learned District Munsif, Maduranthagam, Kanchipuram District in IA.No.386/2018 in OS.No.21/2018.

For Petitioner : Mr.Nagu Sah
For RR 1 to3 : Mr.N.A.Nissar Ahmed
For RR 4 to 9 : No appearance
RR10 to 17 : Given up

ORDER

- (1) The revision arises from the order dated 03.07.2018 passed in OS.No.21 of 2018 which is pending on the file of the District Munsif Court at Maduranthakam. The said suit was filed taking advantage of Order 1 Rule 8 of the Code of Civil Procedure [in short "CPC"] in representative capacity. The plaintiffs sought to institute the suit against the defendants allegedly to safeguard the interest of the suit property and seeking allied reliefs in that regard.

- (2) The learned Judge had an obligation to follow the procedure as enunciated under Order 1 Rule 8 of CPC. The procedure is actually quite simple if examined sequentially and logically. Under Order I Rule 8 [2] of CPC, where a permission or direction is given in accordance with sub-rule [1], then the Court should direct notice about the institution of the suit to all the persons interested. It is always probable that the plaintiffs would have impleaded only the defendants as they feel, are interested in the subject matter of the suit. Where there is every possibility of others, rather than the defendants, who may also be directly interested in ensuring and looking into the progress of the suit, they may not have been impleaded as defendants. It is to inform them about the institution of the suit that notice is directed. This notice should be directed by personal service and if that is not possible, by public advertisement. By viewing public advertisement, if any member of the public, is of the opinion that his/her views should be heard by the Court before any orders are passed in the suit, then under Order I Rule 8[3], he / she may apply to the Court to be made as a party to such suit.

- (3) The suit in OS.No.21 of 2018 had progressed only to that extent. It had progressed to the extent of directing notice and it is seen that an Objector had appeared and in the order now complained by the revision petitioner, the learned Judge had given a direction that the said Objector should be made as a party to the suit and had directed the plaintiffs to take all such necessary application or steps to implead the Objector as a party/defendant to the suit. This particular direction is the borne of contention raised by the learned counsel for the petitioner. He claims that the objector should apply to the Court and such application can be done only after notice had been directed and if notice is not practically possible, then publication has been directed. It is informed that, that stage has not been crossed. The matter will necessarily have to be reverted back to the learned District Munsif, Maduranthakam, to re-examine the provisions under Order I Rule 8 of CPC and follow it scrupulously.
- (4) Mr.N.A.Nissar Ahmed, learned counsel appearing for respondents 1 to 3 also raised a few technical objections. He pointed out the list of plaintiffs in the suit and stated that only one of the plaintiffs, viz., the

1st plaintiff, alone had filed the revision petition and for the reasons best known, he had chosen to show the other plaintiffs as respondents and during the course of the pendency of the revision petition, had also given them up. Therefore, Mr.N.A.Nissar Ahmed, learned counsel appearing for respondents 1 to 3 states that the revision petition itself may not be maintainable and it's maintainability will have to be re-examined.

- (5) The further submission of the learned counsel for the respondents 1 to 3 is that under Order I Rule 10 of CPC, the Court on its' own motion, can direct any party to be impleaded as a defendant to the suit. The learned counsel, therefore states that there is nothing wrong in the order of the learned District Munsif, Maduranthakam, in directing the plaintiffs to take necessary steps to implead the objector as a party / defendant to the suit.

- (6) I however feel that it would only be appropriate that once a suit is instituted under Order I Rule 8 of CPC, the procedure as enunciated under the said provisions, are followed by the learned District Munsif.

- (7) Order I Rule 10 works on a different footing. Where in a *lis* between two parties raising a *right in personam*, it is found that a third party to the suit is also a necessary party who has to be impleaded and whose presence is required for an effective disposal of the issues raised in the suit or if it is found that the issues determined in the suit would affect the interest, then such third party will have to be necessarily impleaded in the suit. That is the case where the *right in personam* is agitated between the plaintiff and the defendant.
- (8) The scope of Order I Rule 8 is much far wider. It encompasses what is normally called a *right in rem* and for that purpose, publication is directed with respect to institution of the suit, inviting any third party who may be interested to apply to the Court, establishing his rights, especially his interest over the subject matter of the suit and then, inviting a decision by the Court to decide whether he should be impleaded or not.
- (9) The onus is on the learned District Munsif, to examine the application made by the 3rd party/stranger and decide whether he is interested and whether his presence is required or whether any orders passed in the

suit would directly affect him. Even though the basis or reason for impleading may be the same, the scopes of Order I Rule 8 is difference and Order I Rule 10 is different.

- (10) I would therefore request the learned District Munsif, Maduranthakam, to re-examine and follow the provisions under Order I Rule 8 of CPC and thereafter pass considered orders in the suit.
- (11) The order under revision is therefore, set aside with a direction to the learned District Munsif, Maduranthakam, to once again take on file IA.No.386 of 2018, follow the procedure as set out in the Code and then pass orders, after hearing all the required parties.
- (12) The issue whether the revision petition is maintainable or not, is not taken up since as the plaintiffs have filed in representative capacity, each one of them have raised a cause and just one of them appearing before the Revision Court may not render revision petition itself as not maintainable.
- (13) With the above observations, the Civil Revision Petition is **allowed**, however with a direction to the learned District Munsif, at

Maduranthakam, to re-hear IA.No.386 of 2018 in OS.No.21 of 2018.

No costs. Consequently, the connected miscellaneous petition is closed.

29.06.2021

AP

Internet : Yes

To

The District Munsif
Maduranthakam.

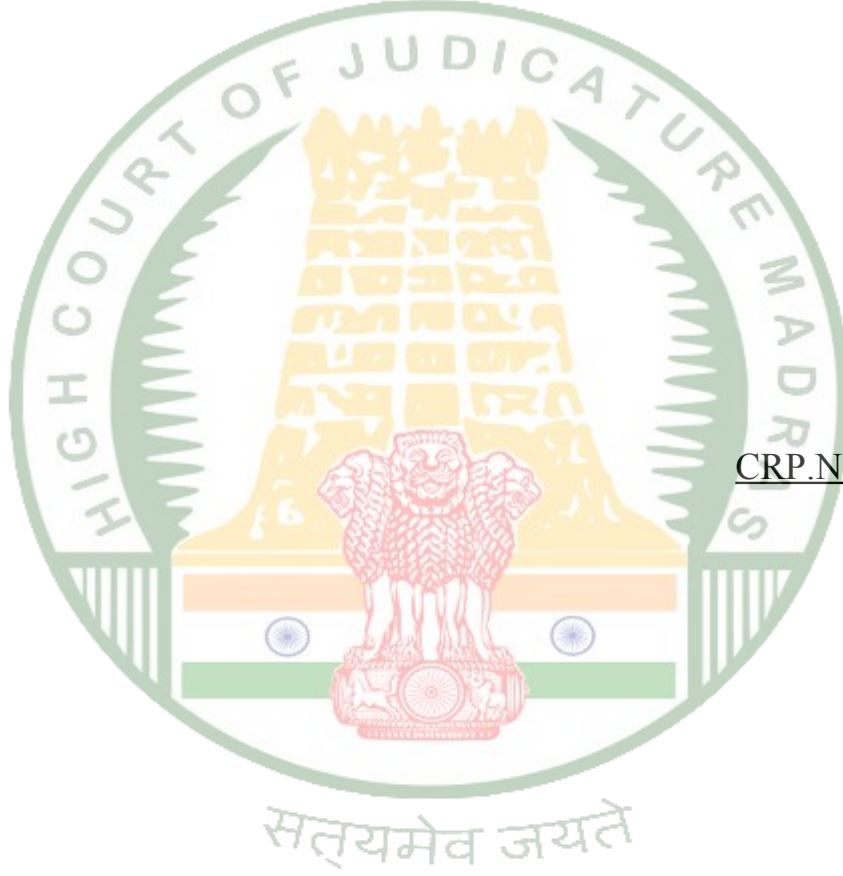


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C.V.KARTHIKEYAN, J.,

AP



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29.06.2021

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