



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2457 of 2019 and
C.M.P.No.16054 of 2019

1. P.V.Mohan
2. Uma Mohan
3. Visalakshi Balasubramanian
4. S.Balasubramanian
5. Mahalakshmi Sivaswamy
6. V.Sivaswamy
7. Rukmani Gopal

... Petitioners

Vs.

1. Covai Property Centre (India)
Private Limited rep. By its
Managing Director
Col. (Retd) A.Sridharan
No.145, II floor,
Bharathi Colony Main Road,
Peelamedu, Coimbatore - 641 004
2. Serene Senior Care Private Limited
a Private Limited Company incorporated
Under the Companies Act, 1956 rep. By its
Director, presently having its office at
Door No.828, 3rd Floor, RKK Complex,
Trichy Road, Ramanathapuram,
Coimbatore - 641 045
3. P.C.Seethalekshmy
4. H.Parameswaran

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India as against the fair and decreetal order dated 24.01.2019 passed in I.A.No.59 of 2018 in I.A.No.2958 of 2014 in O.S.No.2569 of 2014 on the file of the learned IV Additional District Munsif, Coimbatore.

For Petitioners : Mr.T.N.Rajagopalan

For Respondents : Mr.K.R.Arun Shabari for R1
R2 to R4- Served - No appearance



O R D E R

The present Civil Revision Petition has been filed under Article 227 Constitution of India against the order dated 24.01.2019 in I.A.No.59 of 2018 in I.A.No.2958 of 2014 in O.S.No.2569 of 2014 passed by the learned IV Additional District Munsif, Coimbatore.

2. The facts leading to the filing of the present Revision Petition is that the petitioners herein and the respondents 3 and 4, who are the plaintiffs in O.S.No.2569 of 2014 had filed the said suit to declare the suit schedule property as part of the common area, exclusively meant for the benefit of the owners / residents of the senior citizen projects, viz., Sounthariyam, Santhosam and Santhosam Extention, who had since become the beneficiary owners of the same and for certain declaration and mandatory injunction as against the respondents 1 and 2, viz., defendants therein. The plaintiffs have also taken out an application in I.A.No.2958 of 2014 under Order 1 Rule 8 read with Section 151 of Civil Procedure Code, wherein one person may sue or defend on behalf of all, who are having the same interest. The learned District Munsif, Coimbatore, on 10.02.2017, closed the petition on compliance of the notices and the formalities under Order 1 Rule 8(2) CPC. Thereafter, several defendants have been impleaded by various orders as and when the parties came to be impleaded in the suit.

3. The 1st and 2nd defendants had filed the written statement in O.S.No.2569 of 2014 in December, 2015. Thereafter, the 1st defendant / 1st respondent herein had taken out an application in I.A.No.59 of 2018 for re-opening the petition filed the petitioners herein [viz., I.A.No.2958 of 2014, which was closed on 10.02.2017] and to decide the same on merits. The said Application came to be allowed by the learned IV Additional District Munsif, Coimbatore dated 24.01.2019, as against which, the present Revision Petition is filed.

4. Mr.T.N.Rajagopalan, learned counsel appearing for the petitioners, contended that the order allowing to re-open the petition, which was closed four years back without assigning any valid reason has to be set aside. Apart from that, the learned counsel would submit that once the petition under Order 1 Rule 8 of CPC was closed, after following due process of law, it cannot be reopened at the instance of the respondents herein. The learned counsel also would further point out that the said I.A., allowing to re-open has been filed after the trial was commenced and the intention of the respondents is only to drag on the proceedings, thereby prayed to set aside the order passed by the court below.



5. The learned counsel for the petitioners in support his contention has relied on the following Judgments:-

(i) The order of this Court in C.R.P.No.3013 of 1989 [The Executive Officer, Vadakku Valliyur Town Panchayat and another Vs. M.Mattar mohideen and another] wherein it is held as follows:-

"Notice was issued in the application under Order 1 Rule 8 C.P.C., and even publication has been done. The procedure has been followed. The only thing is that final order granting permission has not been expressly passed. In view of the observation in 1980 TNLJ 86 and 1977 Allahabad 421, it should be presumed that a conditional permission has been given by implication. Therefore, the objection taken by the petitioners' counsel based on Order 1 Rule 8 C.P.C., cannot be sustained."

(ii) The order of this Court reported in 2005 (5) CTC 411 [Chennimalai Yarns Pvt., Ltd., and Another Vs. S.Chandrasekar and Others] wherein at Paragraph Nos.16 and 21 it is observed as under:-

"16. Under Section 20(b) C.P.C., the leave must be specifically sought and granted for filing the suit. Leave of the Court may be obtained after institution of the suit. When some of the defendants reside within the jurisdiction and some of the other defendants reside outside the jurisdiction, the Court may be granted leave for filing the suit. By exercise of discretion where leave is granted, the defendants who are residing outside the jurisdiction cannot raise objection. In the absence of any express Clause, conferring jurisdiction upon the Courts at Erode, no valid objection could be raised by the defendants.

21. Order 1, Rule 8, C.P.C., is the enabling Rule, prescribing the condition to file the suit or to be sued in the representative capacity. When the permission has been granted, it becomes the duty of the Court to direct notice to be given to the opposite parties. It is contended that the requirements of Order 1 Rule 8, C.P.C., has not been complied with and that notice to other shareholders has not been issued. In support of this contention that no public notice was issued to the other shareholders, no material had been produced. In the absence of any material, it is not possible to accept the contention that necessary conditions of Order 1, Rule 8 C.P.C., was not complied with. The contention of the Revision Petitioners raising objection regarding the representative capacity of D-6 cannot be accepted. However, it is open to the parties to put-forth their objection at the time of adducing evidence."



6. In contrary, the learned counsel appearing for the 1st respondent contends that they were not heard at the time when the application under Order 1 Rule 8 of CPC was closed, and hence the 1st respondent, has filed the petition to re-open the I.A.No.2958 of 2014, which is just and necessary, the same was considered by the trial court and appropriately order has been passed and same need not be interfered in the present Revision Petition.

7. The learned counsel for the 1st respondent to substantiate his contention has relied on the following order and submitted that the said case squarely applies to the facts and circumstances of the present case and pleaded that the order passed by the court below has to be sustained:-

(i) The Order of High Court of Bombay reported in 2017 SCC Online Bom 5269 [Tata Sons Limited and Others Vs. Ratan N.Tata & Ors.] at Paragraph No. 14 wherein among other things it is stated as follows:-

"....If the suit is truly a representative suit, any decree passed therein would bind every other person who is represented in the suit. A number of such other persons whom the plaintiffs claim to represent, but who actually oppose the suit, will be forced to join the suit with a view to contest it, for if they do not, the decree, which they perceive to be their detriment, will bind them. That would be clearly unjust, if in the first place, there was no warrant in allowing the plaintiff to represent them. In the present case, the non-promoter shareholders, who do not want reinstatement of Mistry, would be bound to accept his reinstatement if the plaintiffs were to succeed and on top of it, suffer such reinstatement as something which was prayed for on their behalf or for their benefit. To avoid such predicament, they would be forced to join the suit and defend it, when they really had no intention or obligation to do so. Nothing could be more unjust."

8. Heard the learned counsel on either side and perused the documents placed on record.

9. This Court is unable to accept the arguments put forth by the learned counsel appearing for the 1st respondent. It is clear that when the Original Suit was filed, i.e., as early as December, 2014, it is seen from the records that an I.A.No.2958 of 2014 was also filed seeking leave of the Court. Since the suit was addressing the interest of the numerous persons, all the plaintiffs, who are senior citizens, has approached the 1st and 2nd defendants for construction of their villas and the issue that has crept in with regard to the common area, that is



public notice being issued, the interested person may join the suit. Merely because the interested persons have joined pursuant to the notice issued and publication effected in one issue of Tamil Daily by order dated 22.12.2014 issued by the learned Principal District Munsif, Coimbatore, and the said petition, viz., I.A.No.2958 of 2014, was closed on 10.02.2017, by observing that "As per Order 1 Rule 8(2), the Notice to General Public will arise only after giving permission to sue in representative capacity", does not mean that it has to be re-opened seeking objection from the newly impleaded parties that too after a period of one year, [viz., 30.01.2018, the day on which I.A.No.59 of 2018 was filed]. Once Publication was effected, the respondents have not chosen to file the counter and if the claim of newly impleaded parties is allowed in favour of respondents / defendants, the same will definitely cause injustice to the petitioners / plaintiffs. Moreover, after due publication only, the I.A.No.2958 of 2014 was heard and closed.

13. On perusing the counter filed by the petitioners to the I.A.No.59 of 2018, it is seen that the contention of the respondents that no other person has joined the suit in support of the petitioners were denied and it was stated that the provisions of Order 8 Rule 1 of CPC does not contemplate that the persons on whose behalf the suit has been filed and those supporting such suit should appear before the Court and that 20 persons, who sought to have impleaded in the suit have not opposed all the reliefs sought for in the suit. Further, it is worthwhile to extract the provisions of Order 1 Rule 8 of Civil Procedure Code:-

"One person may sue or defend on behalf of all in same interest

(1) Where there are numerous persons having the same interest in one suit. -

(a) 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 so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule(1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.



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(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) No part of the claim in any suit shall be abandoned under sub-rule(1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be."

therefore, this Court is of the view that the learned Judge had erred in his decision.

14. That apart, the Judgments relied on by the learned counsel for the petitioners have no relevance to the present case, however, to substantiate that notice is to be issued and thereafter, orders should be passed, the learned counsel has relied on the said Judgments. However, in the present case on hand, the petitioners / plaintiffs have taken out an application in I.A.No.2958 of 2014 under Order 1 Rule 8 read with Section 151 of Civil Procedure Code; on notice, through court and paper publication in one issue of Tamil Daily, the learned District Munsif, Coimbatore, on 10.02.2017 had closed the petition.

15. In view of the foregoing discussions, this Court is of the opinion that the order passed by the learned District Munsif, Coimbatore needs interference from this Court and deserves to be set aside. The reasons adduced by the learned District Munsif, Coimbatore for allowing I.A.No.59 of 2018 in I.A.No.2958 of 2014 in O.S.No.2569 of 2014 is incorrect.

16. Accordingly, the order dated 24.01.2019 made in I.A.No.59 of 2018 in I.A.No.2958 of 2014 in O.S.No.2569 of 2014 is hereby set aside and the present Revision Petition is allowed. As the suit in O.S.No.2569 of 2014 is ripe for trial and the respondents are delaying the proceedings by not cross examining the P.W.1, the learned IV Additional District Munsif, Coimbatore is directed to proceed with the trial without giving unnecessary adjournments, within a period of six months from the date of receipt of copy of this order, by adhering to the



principles of natural justice. It is needless for this Court to point out that the parties are at liberty to put forth their contentions by letting in evidence during trial and the parties are also directed not to take unnecessary adjournments. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The learned IV Additional District Munsif,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Madras

+1cc to Mr.T.N.Rajagopalan, Advocate, SR No.32429
+1cc to Mr.K.R.Arun Shabari, Advocate, SR No.32834

C.R.P.No.2457 of 2019 and
C.M.P.No.16054 of 2019

UM(CO)
B.VC (02/08/2021)