

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.7.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (PD) No.1393 of 2017

and

C.M.P.No.6441 of 2017

1. Murugesan
2. Jeeva
3. Arunachalam
4. Chandra Mohan
5. Muthukumar

Petitioners

vs.

1. Ramdas
2. Samaya Sundaram
3. Rajmohan
4. Commissioner,
Tiruvarur Municipality,
Thiruvarur Demu,
Illakka and Thiruvarur Town and Taluk,
Tiruvarur District.
5. Tahsildar,
Tiruvarur, Thiruvarur Demu,
Illakka and Thiruvarur Taluk and Town,
Tiruvarur District.
6. District Collector,
Tiruvarur District,
Thiruvarur Demu,
Illakka and Thiruvarur Taluk,
Vilamal Village.

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreeal order dated 20.1.2017 passed in I.A.No.410 of 2013 in O.S.No.165 of 2013 on the file of the District Munsif, Tiruvarur.

For Petitioner : Mr.S.Sadasivan

For R3 : Mr.N.Manokaran

ORDER

The revision has been filed against the order and decree passed by the District Munsif, Tiruvarur dated 20.1.2017 in I.A.No. 410 of 2013 in O.S.No.165 of 2013 dismissing the petition filed under Order I Rule 8 CPC.

2. The petitioners are the plaintiffs in the suit.

3. The plaintiffs had filed the suit on behalf of themselves and the Mirasudars and village representatives of Pullatheru Village. The suit 'A' schedule properties in the Sundaravilagam revenue village are administered by the village Mirasudars and the villagers of Pullatheru Village for the expenses of the Arulmighu Pidari Mayiliamman temple. The suit 'B' schedule properties belong to the village community and 'C' schedule properties are the water bodies in the village. The fishing rights of 'C' schedule properties have been with the villagers and the income derived therefrom was used for the public purposes and the

welfare of the village. Since the above properties were not properly maintained by the earlier Administrator Manicka Vanniar, the Mirasudars and villagers of Pullatheru village had earlier filed a suit in O.S.No.301 of 1975 for production of accounts and mesne profits. The said suit was decreed in favor of the Mirasudars and villagers on 30.6.1977 and against that judgment decree, the said Manicka Vanniar filed first appeal in A.S.No.171 of 1977 which was dismissed on 3.3.1978. Against the dismissal of the first appeal, the said Manicka Vanniar filed second appeal in S.A.No.1742 of 1979 and the second appeal was also dismissed by this court on 26.10.1979. Thereafter, an Execution Petition was filed and the properties belonging to the villagers were recovered and handed over to the villagers. 'A' schedule properties were administered and maintained by the Mirasudars and villagers by the elected Committees and the income derived from the properties were used for the expenses of the temple and the income derived from the 'B' schedule and 'C' schedule properties were used for the public purposes of the village.

4. Whiles, the defendants fraudulently sold the suit properties belonging to the village by registered documents dated 18.8.2004, 2.2.2011 and 31.12.2008. Thereby, the plaintiffs having a community

interest, filed the suit in O.S.No. 165 of 2013 to declare the sale deeds as void.

5. The petitioners have also filed I.A.No.410 of 2013 in O.S.No.165 of 2013 under Order I Rule 8 CPC seeking permission to sue on behalf of the villagers having similar interest.

6. The Trial Court, by order dated 2.12.2013 allowed the petition and passed the following order:-

"The petition is allowed in the interest of justice, however the petitioner is directed to give notice to the concerned persons under Order I Rule 8(2) CPC."

7. Subsequently, on 13.12.2013, the court directed the petitioners to give notice to the persons, who are being represented by him in accordance with Order I Rule 8(2) CPC by 2.1.2014. The petitioners, in due compliance of the order, effected public notice by paper publication. The petitioners, in order to prove that they have a community interest, had filed a copy of the judgment in O.S.No.301 of 1975 dated 30.6.1977 and they also filed a copy of the suit register dated 6.11.2013 to prove that earlier a petition had been filed in respect of the very same properties on behalf of Pullatheru Mirasudars. When the matter was listed on 2.1.2014, a vakalat was filed by a

counsel by name Mr.T.P.S.Manickam for objectors 1 to 60 and another vakalat was filed by another counsel for the objectors 61 to 91 and the matter was adjourned to 30.1.2014 for filing of objections and counters by the respondents, however, on 30.1.2014, at the request of the counsel for the respondents, the matter was again adjourned to 28.2.2014 and again to 24.3.2014 and thereafter on 10.6.2014, the first respondent had filed a written statement and thereafter the matter was listed on several dates and the matter was posted for inquiry and finally on 20.1.2017, the Trial Judge had dismissed the petition filed under Order I Rule 8 CPC against which the revision has been filed.

8. The learned counsel appearing for the petitioners would submit that the Trial Court allowed the petition on 2.12.2013 and permitted the petitioners to take notice by way of paper publication. Pursuant to the same, the petitioners, in due compliance, have effected notice by paper publication. Thereafter, counsels entered appearance on behalf of the Objectors. After the respondents have appeared and put forth their objections with reference to the claim of the petitioner to sue in the representative capacity, the court below, if the objectors are deemed to be necessary parties, ought to have

permitted them to be made as parties to the suit and allowed them to putforth their respective cases and on the basis of the pleas putforth by the parties concerned, should have framed necessary issues with reference to the said case on merits and one of the issues would also include the entitlement of the plaintiffs to sue against the defendants in representative capacity on behalf of the community and thereafter the Trial Court should have disposed the suit as per law. On the other hand, the court, having earlier allowed the petition by order dated 2.12.2013, without following the mandatory procedures contemplated under Order I Rule 8 CPC and without understanding the scope and principles outlined under Order I Rule 8 CPC, had strangely, by order dated 20.1.2017, dismissed the petition, which was earlier allowed on 2.12.2013, He further submitted that this Hon'ble court in the judgment in *Sailappan v. Subramanian* (2019-2-LW 885), by following an earlier Division Bench judgment of this court in *Sankiah and others v. Vadakasi and others reported in 1980 TLNJ 86*, had elaborately set out the scope and principles of law under Order I Rule 8 CPC. He would further submit that in this case, the petitioners, as stated above, have produced a copy of the judgment and decree in an earlier suit filed by the Mirasudars of the village in respect of the very same

property alongwith the plaint as document Nos.1 and 2 whereas the Trial Court, without proper application of mind and without following the procedures contemplated under Order I Rule 8 CPC, wrongly observing that the petitioners had not filed any documents and not let in evidence to prove their community interest, had dismissed the petition. He would further submit that the suit schedule properties are the community properties belonging to the village and the plaintiffs as Mirasudars and representatives of the village have got a right to protect the interest of the community. He would, therefore, pray that the civil revision petition may be allowed and the order passed by the Trial Court may be set aside.

9. Per contra Mr.N.Manokaran, learned counsel appearing for the third respondent would submit that the respondents have filed a detailed written statement. He would further submit that the Naattamais and Panchayatdars of the village, who were administering the Arulmighu Pidari Mayiliamman temple, by Resolution dated 29.12.2002, formed an Association and by that Resolution, handed over the administration of the village and the temple to the first defendant and a Resolution was also passed electing other office bearers and only on the Resolution passed by the villagers, certain

deeds were done by the defendants for the welfare of the village and the temple whereas the revision petitioners/plaintiffs, who were antagonized, have filed the Application to defeat the rights of the villagers. He would further submit that no proper notice has been given by the plaintiffs and the notice does not disclose the nature of the suit and it also does not disclose the schedule of properties and the trial court rightly finding that the petitioners have not made out a case for permission under Order I Rule 8 CPC, had rightly dismissed the same.

10. In reply, the learned counsel appearing for the petitioners would submit that the Trial Court, having earlier allowed the Application and granted permission to effect notice by paper publication, can only frame issues in respect of the plea of the plaintiffs under Order I Rule 8 CPC and the issue can be determined in accordance with law taking into consideration the merits of the case at the time of trial and the permission, which was already granted cannot be set aside by a subsequent order.

11. Heard the the learned counsel appearing for the parties and perused the materials available on record.

12. A perusal of the records shows that the plaint has been filed

on 28.11.2013. Along with the plaintiff, petition in I.A.No. 410 of 2013 had been filed by the revision petitioners/plaintiffs seeking permission to file the suit in a representative capacity under Order I Rule 8 CPC. The Trial Court, by order dated 2.12.2013, had allowed the petition and directed the petitioners to take notice, based on which, paper publication has been affected and the objectors had also filed the objections.

13. In a similar situation, relying upon the decision in *Sankiah and others vs. Vadakasi and others* (1980 TLNJ 86) wherein the principles of law have been outlined under Order I Rule 8 CPC and various other decisions, this court has held in *Sailappan v. Subramanian* (2019-2-LW 885) as under:-

" 11. In this connection, for a better understanding of the scope and the principles of law outlined under Order I Rule 8 C.P.C., it is apt to refer the decision of this Court in *Sankiah and others vs. Vadakasi and others*, reported in 1980 TLNJ 86, wherein the Division Bench had elaborately set out the scope and the principles of law adumbrated under Order I Rule 8 C.P.C., as follows:

"Order 1 Rule 8 is an exception to the general rule that all persons interested in a suit should be joined as parties to it so that the matters involved may be finally adjudicated upon and multiplicity of litigation in respect of the same matter may be avoided. The rule which is based upon reason and good policy provides where a number of persons have the same interest in the subject matter or the suit, one or more of them can, with the permission of the Court, sue or be sued on behalf of themselves and the others. The conditions that are to be satisfied for applicability of the rules are: (1) The parties must be numerous. But the rule does not fix any limit to number. The word numerous is not a term of art; nor is it synonymous with the word numberless or innumerable. It only means a group of persons such as would make it inconvenient for the plaintiffs to implead all of them either as

plaintiffs or defendants individually. (2) The parties must have the same interest in the suit. The interest must be common between them all or they must have a common grievance which they seek to redress. In other words in a representative action it is essential that the class of persons on behalf of whom or against whom relief is sought should be clearly defined. (3) The Court's permission under the rule must be obtained. The Court should exercise its judicial discretion in granting permission to a person to sue in a representative capacity under the rule. The Court should be satisfied that there is community of interest as between the plaintiffs or the defendants, as the case may be, to justify the adoption of the procedure provided under the rule. However, it is not necessary that a formal order should be passed by the Court. From the circumstances of the case and

from the fact that the Court had ordered publication of the notice it can be presumed that the Court had granted the necessary permission under Order 1 Rule 8. (4) Notice must be given to the parties to whom it is proposed to represent in the suit. Issue of a notice either privately or by publication on the persons concerned is an indispensable preliminary to the trial of the suit under Order 1 Rule 8. It is necessary that the plaintiff should give the names of persons whose addresses are ascertainable. If personal service is not practicable in respect of ascertained persons or if the persons are unascertainable then resort should be had to service of notice by publication. In such a case, the Court should see that they are published in such dailies that the persons interested are likely to read it, This is because any decision rendered in a suit filed with

permission of the Court under Order 1 Rule 8 will be binding on persons who are not parties to the suit and they will not be in a position to contest the suit on a subsequent occasion as the earlier decision would operate as res judicate by virtue of Explanation 6 to section 11 of the Civil Procedure Code which provides that where persons litigate bonafide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating'. Hence a heavy duty is cast on the Court to meticulously follow the procedure prescribed by Order 1 Rule 8 C.P.C. Even though a defendant against whom a decree is sought may not raise any such objection against the plaintiff (5) The provisions of Order 1 Rule 8 do not enjoin that the plaintiffs should obtain before hand the

authority of those whom they seek to represent, the reason being that it will be open to all person having the same interest to get themselves impleaded and either support the plaintiff or oppose him in the suit. Similarly, it will not be open to the defendants to state that they do not seek to represent the class of persons against whom the suit is sought to be filed in a representative capacity. The above principles can be deduced from the following decisions.

A.I.R. 1933 Privy Council 183; A.I.R. 1972 Ker 269; A.I.R. 1943 Mad 161; A.I.R. 1933 Lah 749; A.I.R. 1959 Bom 491; A.I.R. 1965 Ker 200; A.I.R. 1977 All 421.

...

...

There may be some inter se dispute between the plaintiffs and their followers on the one side and certain group of residents of Chellam

North and South Streets on the other. But that cannot in any way debar the plaintiffs from filing the suit with the leave of the Court under Order 1 Rule 8. What is necessary is that the plaintiffs should obtain the permission of the Court to institute the suit in a representative capacity under Order 1 Rule 8. The rules does not enjoin that the plaintiffs should obtain before hand the authority of those on whose behalf they seek to institute the suit with the leave of the Court under Order1 Rule 8. It is not the concern of the defendants whether the persons whom the plaintiffs seek to represent see eye to eye with the plaintiffs in the matter of the conduct of the suit. It will be open to any of the persons whom the plaintiffs seek to represent to get himself impleaded in the suit and get the suit decreed differently or even dismissed if, according to him, no relief as prayed for by the plaintiffs, should be granted

by the Court. Therefore, apart from the fact that the plaintiffs need not be supported by the previous consent of all those persons whom they seek to represent as plaintiffs in the suit, the defendants have no locus standi to say that the plaintiffs are not competent to represent the others whom they seek to represent.

A.I.R. 1921 Mad. 682; A.I.R. 1929 Mad. 44; ref.

In A.I.R 1932 Bombay 65 it has been held that it is not permissible for a Court to dismiss a suit under Order 1 Rule 8 simply on the ground that some persons object to the plaintiffs carrying on the suit.

...

...

Further, it is not for the defendants to object to the leave being granted to the plaintiffs to sue the defendants in a representative

capacity. It has been held in 1913 I.L.R. 36 Madras. 418 thus: 'A plaintiff may be allowed to sue certain defendants under section 30 C.P.C. Of 1882, as representing certain others in spite of the objection or refusal of the defendants on record to represent the others the consent of the defendants on record not being necessary'.

In this context, it is necessary to state that in a suit which is filed with the permission of Court under Order 1 Rule 8 no question of misjoinder or non-joinder of parties would arise. The very purpose of filing a suit under Order 1 Rule 8 C.P.C. is because it will be inconvenient to implead all the necessary parties to the suit. Once the necessary notice under Order 1 Rule 8 is published it will be open to the other parties to get themselves

impleaded and either support the plaintiffs or oppose the relief claimed by the plaintiffs. Therefore, the finding of the trial Court on issue No.4 viz., that the suit is bad for non-joinder and misjoinder is equally erroneous and is therefore set aside.'

12. Considering the position of law as regards the Order I Rule 8 C.P.C., as amply brought out by the Division Bench in the abovesaid decision, it is seen that once the Court had deemed it fit to take the application on file and issue notice to the defendants concerned as well as the objectors and the plaintiff also having effected notice, in respect of the same, by way of the paper publication, as provided under the law, it is found that the same itself would amount to presume that the Court had granted necessary permission under Order I Rule 8 C.P.C. If at all the objectors, to whom the notice had been sent, have any resistance to the abovesaid application preferred by the plaintiff, at the most, they are entitled only to putforth their objections

with reference to the same and if they deemed it fit, as provided under Order I Rule 8 C.P.C., they can always apply to the Court concerned to be made as parties to the suit of the plaint and accordingly, get themselves impleaded and thereby, thereafter putforth their respective cases in the suit and accordingly, it is found that thereafter, the Court below, after considering the rival contentions of the parties in respect of the abovesaid issue, after framing necessary issues in the suit, should proceed to determine the same as well as the other issues and thereby, dispose of the suit. However, insofar as this case is concerned, the abovesaid procedure contemplated in the law as well as outlined in the abovesaid decision, having not been followed, on the abovesaid ground alone, it is seen that the impugned order is liable to be dismissed.

13. In the decision in Royal Villa Residents' Association vs. The Project Management Committee, reported in 2013 (4) CTC 205, it has been held that even if the suit had been filed without complying with

the provisions of Order I Rule 8 C.P.C., the only course available to the Court concerned is to frame necessary issues with reference to the same during the course of trial and determine the issue either way and on that ground, the Court would not be entitled to strike off the suit for non-compliance of the provision and this position of law has been outlined in the abovesited decision in the following manner:

'Code of Civil Procedure, 1908 (5 of 1908), Order 1, Rule 8 – Non compliance of provision – Striking out of Plaint – Whether there has been compliance of Order 1, Rule 8, to be decided by framing issues during trial – Plaint cannot be struck off in Revision for noncompliance of provision – Civil Revision Petition dismissed.

Facts : Respondents herein filed Suit for injunction. Instant Revision has been preferred by Defendant in Suit for striking out of Plaint in Suit on account of non-compliance of Order 1,

Rule 8 of CPC.

Held : According to me, without going into the merits of the contentions raised by both the parties, at this stage, the suit cannot be struck down on the ground of non-compliance of Order 1 Rule 8 of Civil Procedure Code. To attract the provisions of Order 1 Rule 8 of Civil Procedure Code, the suit must have been filed in the representative capacity and admittedly, the suit was filed by the respondents representing the Project Management Committee, Kotturpruam Officers Cooperative Housing Society which is a registered body under the Societies Registration Act and where the Project Management Committee which is a part of the Officers Co-operative Housing Society can file a suit without complying with the provisions of order 1 Rule 8 of Civil Procedure Code can be decided only during trial by framing necessary issues to that effect.

Therefore, at this stage, it cannot be stated that the suit filed by the respondents is not maintainable for non-compliance of Order 1 Rule 8 of Civil Procedure Code. Further, the Honourable Judge Mr.Justice P.Sadasivam, as he then was held in Kamaraj Bhavan, Lower Bazaar Road, uthagamandalam v. A.Rahim and 3 others, 1996-2-L.W 456(cited supra) held that the failure of the plaintiffs to obtain permission under Order 1 Rule 8 of Civil Procedure Code is only a procedural irregularity and the permission can be obtained even during the pendency of the appeal and in that reported case, permission was granted in the Second Appeal stage. Therefore, in my opinion, plaint cannot be struck off on the ground that the suit was not filed by complying with the provisions of Order 1 Rule 8 of Civil Procedure Code and in my opinion, the same has to be decided during trial by framing

necessary issues. Hence, I do not find any merit in the revision Petition and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

14. Similar is the view expressed by this Court in the decision in Chennimalai Yarns Pvt., Limited vs. S.Chandrasekar, reported in 2005 (5) CTC 411 and the abovesaid position of law is outlined as follows:

'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.'

15. Therefore, it could be gathered from the abovesited decisions, if at all either the defendants or the objectors have any resistance or objection to the entitlement of the plaintiff to file the suit in the representative capacity, the defendants should putforth their pleas in the written statement or in the counter and the objectors, after putting forth their objections, should apply to the Court to get themselves impleaded in the lis and also reiterating their objections with reference to the entitlement of the plaintiff to sue in

the representative capacity and thereafter, the course open to the Court is to frame issues on that point and determine the same in accordance with law."

14. In the case on hand, having already allowed the petition by order dated 2.12.2013, the option available to the Trial Court could only be to frame issues on that aspect and should have passed in order in accordance with law whereas the Trial Court had subsequently, by order dated 20.1.2017, had dismissed the Application under Order I Rule 8 CPC. Further, it is seen that the petitioners have filed the documents relating to the earlier suit in respect of the very same properties filed in the representative capacity, however, the Trial Court had ignored the documents and rendered a wrong finding that the petitioners have not filed any document. Therefore, this court is of the opinion that the order passed by the Trial Court is erroneous and suffers from infirmity. Further, it has been submitted by the learned counsel for the respondents that notice is not properly served under Order I Rule 8 CPC.

15. Accordingly, the civil revision petition is allowed and the matter is remitted back to the Trial Court. The petitioners are directed to issue proper notice in accordance with law and thereafter the court,

apart from framing other necessary issues, shall frame the issue on the aspect of right of the plaintiffs to file the suit in their representative capacity and dispose of the suit in accordance with law. No costs. The connected Miscellaneous Petition is closed.

29.7.2021.

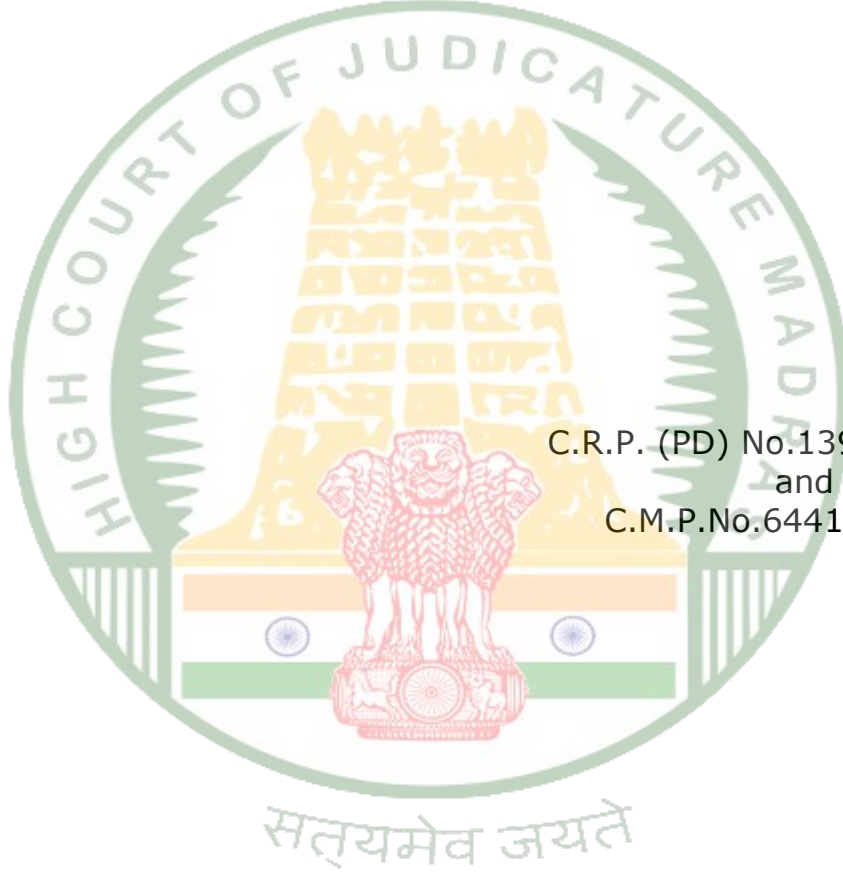
Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. District Munsif,
Tiruvavur.
2. Commissioner,
Tiruvavur Municipality,
Thiruvavur Demu,
Illakka and Thiruvavur Town and Taluk,
Tiruvavur District.
3. Tahsildar,
Tiruvavur, Thiruvavur Demu,
Illakka and Thiruvavur Taluk and Town,
Tiruvavur District.
4. District Collector,
Tiruvavur District,
Thiruvavur Demu,
Illakka and Thiruvavur Taluk,
Vilamal Village.

A.D.JAGADISH CHANDIRA, J.

Ssk.



C.R.P. (PD) No.1393 of 2017
and
C.M.P.No.6441 of 2017

WEB COPY

29.7.2021.