



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Civil Revision Petition [PD] No.4793 of 2013
& M.P.No.1 of 2015

1. Leela
2. CPM Raja ... Petitioners/Defendants 5&6

..Vs..

1. Coimbatore District Athupalam Puthiya Pallivasal
Kattum Oor Committee
rep. by its President M.M.Abdul Rahim
Secretary P.S.Abudhahir,
Present Treasurer K.Jahir Hussain,
Athupalam, Coimbatore. ... 1st Respondent/Plaintiff
2. S.Piyarijan
3. S.H.Syed Sukur
4. Syed Kasim
5. Syed Sultan
- 6, Anthoniammal
[Not necessary party, hence, given up]

... Respondents 1 to 6 / Defendants 7

Prayer:

This Civil Revision Petition has been filed under Article 227 of Constitution of India against the fair and decreetal Order dated 26.03.2013 made in I.A.No.300 of 2012 in O.S.No.187 of 2012 on the file of the Principal Subordinate Judge, Coimbatore.

For petitioners : Mr.S.Mukunthan
for Sarvabhauman Associates

For Respondents : Mr.L.Mouli - R1
Mr.N.Manokaran - R2



O R D E R

Aggrieved against the allowing of the application filed in I.A.No.300 of 2012 in O.S.No.187 of 2012 to reopen the suit for the purpose of receiving the application seeking permission to prosecute the suit in a representative capacity for the reliefs prayed in the suit.

2. The suit in O.S.No.187 of 2012 before the Principal Sub Ordinate Judge, Coimbatore has been filed by the plaintiff for the relief of specific performance and other reliefs. In the suit, evidence has already been completed and arguments of both sides have been heard and when the case has been reserved for judgment, the Court has suo motto framed an issue namely "whether the plaintiffs have the right to file the suit in a representative capacity without complying the mandatory provisions of Order I Rule 8 CPC". To avoid any technicalities, the petitioner filed I.A.No.300 of 2012, application for reopening the main suit to seek necessary permission to prosecute the suit in the representative capacity.

3. The respondents filed a counter stating that the application filed by the petitioner therein under Order I Rule 8 of CPC is barred by limitation and the same has been filed after the suit was reserved for pronouncing of judgment. It is further stated that the office bearers of the petitioner Oor Committee cannot represent the said Committee as the same is an unregistered body and merely because the Court suo moto framed an issue regarding maintainability of the suit, it does not mean that the petitioner is entitled to file an application under Order 1 Rule 8 of CPC and hence, submitted that the petitioner cannot reopen the case for receiving the above petition.

4. After hearing both sides, the Court below has allowed this application giving an opportunity to the petitioner to adduce evidence with regard to issue suo motto framed. Challenging the same, the respondents therein have filed the present Civil Revision Petition to set aside the Order passed in I.A.No.300 of 2012.

5. The main contention of the petitioners herein is that the trial Court ought not to have entertained the application filed for reopening the main suit when the same was reserved for judgment and the application seeking permission to prosecute the suit in a representative capacity was not filed at the time of the filing of the suit. It is his further contention that the first respondent, which is an unregistered body, cannot maintain the suit as well as the application and hence, prayed to allow this Civil Revision Petition and set aside the Order passed in I.A.No.300 of 2012.



6. Perusal of records would go to show that the plaintiffs have filed the suit for specific performance. According to the petitioners, after the arguments is over and when the matter is reserved for judgment, the Court has framed an issue "whether the plaintiffs have a right to file an application to seek permission to prosecute the suit in the representative capacity without complying the mandatory provisions of Order I Rule 8 CPC." Therefore, it is seen that to avoid technicalities, the plaintiffs have filed this application for reopening the suit for seeking permission to prosecute the suit in a representative capacity. Before the Court below, the learned counsel for the respondents objected the application on the ground that the above application has been filed at the fag end of the suit and therefore, they cannot reopen the case. The learned Judge considering the fact that an issue has been framed in this regard, has allowed the above application filed to reopen the case.

7. Further, the learned counsel for the respondents relied on the judgment in Rt. Rev. Timothy Ravinder Dev Pradeep, the Bishop, CSI, Coimbatore Vs. Rev. Charles Samraj, N.Presbyter & Chairman reported in 2002 [1] CTC 157 wherein it has been held that non filing of an application under Order I Rule 8 of CPC is only a procedural error and such an application can be filed even during the pendency of the appeal and allowed the application. In the present case, the plaintiffs have filed an application under Order I Rule 8 of CPC during the pendency of the suit along with this application to reopen the case. Hence, the above judgment is applicable to the facts of the present case. Therefore, the learned counsel contended that the trial Judge has rightly allowed the application and prayed for dismissal of this Civil Revision Petition.

8. Heard the learned counsel for both sides and perused the materials placed before this Court.

9. Considering the judgment relied upon by the learned counsel for the respondent in Rt. Rev. Timothy Ravinder Dev Pradeep, the Bishop, CSI, Coimbatore Vs. Rev. Charles Samraj, N.Presbyter & Chairman reported in 2002 [1] CTC 157 wherein it has been held that non filing of an application under Order I Rule 8 of CPC is only a procedural error and such an application can be filed even during the pendency of the appeal and allowed the application. Here, in the present case on hand, the Court below had framed suo moto issue and the learned Judge has rendered a finding that an opportunity has to be given to the petitioner to adduce the evidence with regard to the same and had allowed the application. Therefore, this Court finds no infirmity with the order, dated 26.03.2013 passed by the learned



Principal Subordinate Judge, Coimbatore in I.A.No.300 of 2012 in O.S.No.187 of 2012 and interference of this Court is not necessary.

10. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs. The learned trial Judge is directed to dispose of the suit in O.S.No.182 of 2012 within a period of three months from the date of receipt of a copy of this Order.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrc

To

The Principal Subordinate Judge,
Coimbatore.

+1cc to Mr.L.Mouli, Advocate, S.R.No.15947

+1cc to Mr.N.Manokaran, Advocate, S.R.No.15634

+1cc to M/S Sarvabhauman Associates, Advocate, S.R.No.15620

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MG(CO)

CT 26/05/2022