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CRP.No.2204 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P.No.2204 of 2016
and C.M.P.No.11452 of 2016

1.T.M.S.Gunasekaran
2.T.M.A.Iniyan

... Petitioners
/Respondents 6 and 7
/Defendants 6 and 7

-Vs-

1. A.Swaminathan
for himself and as representative
of Chinnakatchi of Senguntha Mudaliars
of Tharamangalam and devotees and worshippers
of Sri Kannanur Mariamman Temple
Sri Muthukumarasamy Temple
Tharamangalam, Omalur Taluk

..Respondent No.1
/Petitioner/Plaintiff

2. The Secretary
Government of Tamil Nadu
Tamil Culture and development
Hindu Religious and Endowment
Chennai-600 009

3.The Commissioner
Hindu Religious and Endowment
Nungambakkam High Road
Chennai-600 034



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4. The Joint Commissioner
Hindu Religious and Endowment
Administration Department
Kottai Mariamman Temple Compound, Salem-1
5. The Assistant Commissioner
Hindu Religious and Endowment, Takkar
Sri Kailasanathar Koil Compound
Tharamangalam Post
Omalur Taluk, Salem District
6. The Executive Officer
Sri Kannanur Mariamman Temple
Sri Kailasnathar Kovil Compound, Salem-1
7. Tharamangalam Nagara Nanbargal Kulu
Rep. By its President Tharamangalam Nagar Nanbargal
Kulu, Tharamangalam Post
Omalur Taluk, Salem District
8. Tharai Anjal Nanbargal Kulu
Rep. By its President
Tharai Anjal Nanbargal Kulu
Tharamangalam Post, Omalur Taluk
Salem District
9. Tharai Indian Nanbargal Kulu
Rep. By its President
Tharai Indian Nanbargal Kulu
Tharamangalam Post, Omalur, Salem District
10. Ra. Shanthi, The Executive Officer
Sri Kannanur Mariamman Temple
Sri Kailasanathar Kovil Compound
Tharamangalam Post
Omalur Taluk, Salem District

...Respondents 1 to 5
and 8 to 11
/Defendants 1 to 5 and 8 to 11



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 15.06.2016 made in I.A.No.368 of 2016 in O.S.No.105 of 2016 on the file of District Munsif Court, Omalur.

For Petitioner : Dr.R.Gouri

For Respondent : M/s.V.Sekar for R1

Mr.R.Karthikeyan for R6

R3 to R5, R7 to R10 – No appearance

ORDER

This civil revision petition is filed as against the order dated 15.06.2016 made in I.A.No.368 of 2016 in O.S.No.105 of 2016 on the file of District Munsif Court, Omalur. The impugned order reads as follows:-

“ Petitioner and respondents present. Tom Tom effected.

Paper publication effected. Objectors appeared before this court and requested time for filing objections. But as per Order 1 Rule 8(2) of CPC., the permission to sue in representative capacity to the plaintiff has been given. It is only a public advertisement to this public. Hence the purpose of Order 1 Rule 8(2) is effected. “



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2. Learned counsel for the revision petitioner/defendants 6 and 7 submitted

that as per the settled dictum of law, the condition necessary for the maintainability of a representative suit is that the persons on whose behalf the suit is instituted should have the same interest. Community of interest is essential and it is a condition precedent for bringing a representative suit. Therefore, the suit filed by the plaintiff in the representative capacity for his own interest is not maintainable.

3. According to the learned counsel for the revision petitioner, only after paper publication effected in I.A.No.368 of 2016, the objectors have come to know prayer of the plaintiff to file the suit in representative capacity and so they approached the trial court for filing their objections. Almost 60 objectors appeared before the court below and sought time to file their objections. Order 1 Rule 8 of CPC is mandatory and need to be complied with. So it is the duty of the court to give opportunity of hearing to objectors.

4. Per contra, learned counsel for the 1st respondent in this revision petition/plaintiff in I.A.No.368 of 2016 would submit that plaintiff in the suit represents one group. The plaintiff being the Nattaimaikarar representing the



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Chinna Katchi of Senguntha Mudaliar Group at Tharamangalam, filed the above suit to vent out the grievances of Chinna Katchi Senguntha Mudaliar Group to which the plaintiff belonged.

5. The learned counsel for the first respondent/plaintiff would submit that in I.A.No.386 of 2016, the process of formalities like public notice, tom tom in the local area and receipt of objections were duly complied.

6. The learned counsel further submits that to vent out the grievances of group of Chinna Katchi Senguntha Mudaliars, the I.A., has been filed and the trial court taken the same on file. The trial and other proceedings and conduct of enquiry in the I.No.386 of 2016 is to proceed and at that point of time, the defendants 6 and 7 before the trial court has filed this revision petition, which is in pre mature stage.

7. Heard both sides and perused the records carefully.

8. Admittedly O.S.No.105 of 2016 is pending for trial. It is submitted by the learned counsel for the first respondent that revision petitioners



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herein/defendants 6 and 7 has not filed written statement in the suit.

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9. The suit in O.S.No.105 of 2016 has been filed by the first respondent herein who is the plaintiff in representative capacity on behalf of Chinnakatchi of Senguntha Mudaliars of Tharamangalam, for permanent injunction restraining the defendants 1 to 6, 11 in allowing defendants 7 to 10 in the temple activities except proper order in respect of suit temples and also for a decree of permanent injunction restraining defendants 1 to 6, 11 from publishing the defendants 7 to 10 names except proper order.

10. In the said suit, I.A.No.368 of 2016 has been filed by the plaintiff seeking permission to file the suit on representative capacity for himself and Chinnakatchi of Senguntha Mudaliars of Tharamangalam and devotees and worshippers of Sri Kannanur Mariamman Temple, Omalur Taluk.

11. According to the revision petitioners, who are the defendants/objectors, they came to know about the filing of the suit in representative capacity only when the paper publication was effected.



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12. The contentions of the learned counsel for the revision petitioners is that the learned Judge ought to have given an opportunity of hearing to the defendants, who are the objectors to put forth their case. But the learned Judge proceeded with the suit and I.A. At this stage, the revision petitioners/ defendants have come forward with the present revision petition stating that only after paper publication effected by the plaintiff, the objectors having coming to know of the same, have approached the trial court to file their objections. It is also submitted that the objectors being themselves in Chinnakatchi group have objected that the plaintiff had not obtained any acceptance from their group people to file the above said suit. They have objected that the plaintiff is not acting as representative in Chinnakatchi and devotees and worshipers of the said temple but he is acting adverse to their interest and that almost 60 objectors belonging to chinnakatchi group have appeared before the court below and sought time to file their objections. However, the court below by docket order dated 15.06.2016 endorsed the I.A, on the ground that permission to sue in representative capacity to the plaintiff has already been given and it is only a notice in public advertisement to the public. Aggrieved by the same, the petitioner has approached this court for the procedural irregularity committed by the trial court.



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13. It is the contention of the learned counsel for the revision petitioners that permission to sue in representative capacity has changed the very nature of the suit and hence, to decide the maintainability of the suit as a preliminary issue in the suit is paramount.

14. Since the petitioners have questioned the very maintainability of the suit, it would be appropriate that the learned Judge is directed to decide the preliminary issue with regard to the maintainability of the suit. Accordingly, the following order is passed:-

(i) The trial court is directed to decide the preliminary issue regarding the maintainability of the suit in a representative capacity and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

(ii) If the learned Judge finds that the suit filed in representative capacity is maintainable, trial of the suit is to proceed and the learned Judge, trial court, is directed to dispose of the suit on merits and in accordance with law.

15. The civil revision petition is disposed of with the above directions. No



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costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
nvsri

To

1. The District Munsif Court, Omalur.
- 2.The Record Keeper, VR.Section, High Court, Madras



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J. NISHA BANU, J.

nvsri

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