



CRP(PD)No.2595 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.01.2022
PRONOUNCED ON : ..02..2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.2595 of 2017

and

C.M.P.No.12372 of 2017

(Through Video Conferencing)

Kunjampalayam & Thattankuttai
Thanneerpanthal Trust
Rep. by its President M.Ponnusamy
S/o.Marappa Gounder,
D.No.47, Rasampalayam,
Namakkal &
Secretary B.Subraamani
S/o. S.Palaniappan,
D.No.3/57, Rasampalayam, Namakkal

... Petitioner

Vs.

1.Mani

2.Siva

3.Nadarajan

4.P.Ramasamy

5.E.Ramasamy

6.Subramani

... Respondents

Prayer:- This Civil Revision Petition is filed, to set aside the fair and decreetal order, dated 07.07.2017, made in I.A.No.793 of 2016 in O.S.No.213 of 2016, on the file of the Principal District Munsif Court, Namakkal.



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For Petitioner : Mr.N.Subramaniyan

For Respondents : Mr.T.Dhanya Kumar

ORDER

The Civil Revision Petition is filed, against the fair and decreetal order, dated 07.07.2017, made in I.A.No.793 of 2016 in O.S.No.213 of 2016, on the file of the Principal District Munsif Court, Namakkal.

2.The Petitioner herein is the Plaintiff and the Respondents herein are the Defendants in the suit in O.S.No.213 of 2016. The suit was filed by the petitioner Trust against the defendants, for declaration, declaring that they are the absolute owner of the suit property and also for permanent injunction and for costs.

3. Pending the suit, the Petitioner herein has filed the application in I.A.No.793 of 2016, seeking permission to treat the respondents as representatives of the Pulavarpalayam Village in a representative capacity. Since the said application was dismissed, by the impugned order, dated 07.07.2017, the Civil Revision Petition has been filed by the petitioner.



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4. The learned counsel for the petitioner would submit that the impugned order was passed by the court below is contrary to the provisions of Order I Rule 8 of the Code of Civil Procedure. As per the provisions contained under Order I Rule 8, the plaintiff has filed the aforesaid application seeking to treat the defendants herein, in their representative capacity for and on behalf of the Pulavarpalayam Village, to defend the suit as the defendants are some of the residents of Pulavarpalayam Village and therefore, the application in I.A.No.793 of 2016 ought to have been allowed. However, the trial court was carried out by the objections raised by 54 objectors and directed the plaintiff to implead them. When already the petitioner/plaintiff has complied with the mandate under Order I Rule 8 of the CPC, the petitioner cannot implead whosoever objects to the institution of the suit. Therefore, the trial court ought to have directed the individual objectors to implead themselves as defendants in the suit instead of directing the plaintiff to implead them as defendants while dismissing the application filed under Order I Rule 8 (3) of the Code. In support of this contention, the learned counsel for the petitioner relied on the decision in the case of *Venu Srinivasan vs. Krishnamachari, Secretary, Divya Desa Parambariya Paathukappu Peravai* reported in *2006 1 Law Weekly* wherein it was held that the persons in whose behalf or for whose benefit the suit is instituted or defended may apply to the Court to get



themselves as impleaded as party defendant and the plaintiff cannot be directed to do so. Reliance was also placed on the decision of this Court in the case of *[The Assistant Commissioner, Hindu Religious and Charitable Endowments Versus Nattamai K.S.Eellappa]* reported in *100 Law Weekly Part 9 Page 240* for the same proposition. By placing reliance on the aforesaid decisions, the learned counsel for the petitioner prayed for allowing this Civil Revision Petition.

5.On the above contention, this Court also heard the learned counsel for the respondents 1 to 6 who supported the order passed by the court below and prayed for dismissal of the Civil Revision Petition.

6.It is no doubt true that the petitioner/plaintiff has filed the instant application seeking to treat the defendants herein as the representatives to represent the cause of the Pulavarpalayam Village. Such an application itself is in compliance with the mandate provided under Order I Rule 8 of CPC. However, some of the Villagers raised objection by filing a memo by stating that they are also entitled to be impleaded as party defendants. If it is so, they can very well implead themselves as party defendants, either by filing an application or the court below can implead them as party defendants on its



own. Instead, the trial court misdirected itself to direct the plaintiff to implead the 54 objectors who objected to the institution of the suit. This procedure resorted to by the court below is uncalled for.

7.It is well settled that O.1, R.8, Code of Civil Procedure enables one or more persons to sue on behalf of numerous persons having the same interest with the permission of the Court.

8.In the decision of this Court in **Karuppa Gounder vs. Appavoo** this Court held as follows:-

“7.Therefore, if the instant case is looked into from the said angle, interest of justice requires that the persons who are names in the objection petition namely 28 of them should be impleaded as parties to the suit. Since these persons have raised objections as regards the propriety of the petitioners right to use a particular property as pathway to reach his agricultural land, it is but appropriate that all 28 of them are impleaded as defendants to the suit. However, the Court below without resorting to such procedure, dismissed the petition and granted liberty for the petitioner to file a fresh petition by impleading parties. In my view, this procedure need not be resorted to as it would result in multiplicity of proceedings and further delay the



disposal of the suit. In order to do substantial justice, the objectors have to be necessarily made as parties to the suit. From the tenor of the objection given, it appears that they have been opposing the claim of the petitioners on merits. Therefore, it is necessary that these objectors are also impleaded as defendants in order to fulfill the mandatory requirement under Order I Rule 8 CPC. Though it is contended that the objection by the 28 persons is on the merits of the Suit claim and not as regards the application under Order I Rule 8m CPC, ends of justice would be met only if they are impleaded as defendants, as any decree, if granted would have an effect on those objectors, who claim to be residents of the said hamlet.”

9. In that case, the plaintiff has filed the suit in O.S.No.34 of 2018 along with an application in I.A.No.161 of 2008 to prosecute the suit against the defendants 1 to 4 for themselves and as representatives of the hamlet Pulla Goundanpatty, Arundhadhiar Colony, Tiruchengode Taluk. In the suit, an objection was filed by 28 persons, as in the present case, stating that they are the persons residing in Arundhadhiar Street and had a common interest in respect of the relief sought for in the suit. The trial court dismissed the application of the plaintiff with liberty to file a fresh petition impleading one and all, who are having interest over the property. In the Civil Revision



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Petition filed before this Court, it was held as mentioned above, holding that it is necessary that the objectors are also to be impleaded as defendants to fulfil the mandatory requirement under Order I Rule 8 of CPC, at the same time, dismissal of the application under Order I Rule 8 filed by the plaintiff is not proper.

10. Following the aforesaid direction, the order, dated 07.07.2017, made in I.A.No.793 of 2016 in O.S.No.213 of 2016, on the file of the Principal District Munsif Court, Namakkal is set aside. The Civil Revision Petition is allowed. No costs. It is open to the objectors to implead themselves as party defendants in the suit, if they are so advised, within a period of eight weeks from the date of receipt of a copy of this order. If any such application is filed the trial court shall entertain the same, if they are otherwise in order.

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Index:Yes/No

Web:Yes/No

Speaking order / Non Speaking order

To:

1. The Principal District Munsif Court, Namakkal.

2. The Section Officer,

V.R. Section, High Court of Madras.

<https://www.mhc.tn.gov.in/judis>



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S.KANNAMMAL, J.

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Pre-Delivery Order made in
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