



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(MD)Nos.1396 & 1397 of 2019
and
C.M.P.(MD) No.7442 of 2019

1.C.S.I. Ayar Mandala

Kaspa Sapai Arumanai, (CSI Home Church)
Rep by Secretary, Pallivilai,
Arumanai Post, Vellam Code Village,
Vilavan Code Taluk,
Kanyakumari District.

2.The Pastor,

CSI Home Church,
Pallivilai, Arumanai Post,
Vellam Code Village,
Vilavan Code Taluk,
Kanyakumari District.

... Petitioners in both CRPs.

-vs-

1.A.Stanly

2.Semon Aruldhas

3.S.Rajesh

... Respondents Nos.1 & 3

4.The Executive Officer,

Arunanai Town Panchayat,
Pallivilai, Arumanai Post,
Vellamcode Village,
Vilavancode Taluk,
Kanyakumari District.

5.The Revenue Divisional Officer,

Padmanabhapuram,
Thuckalay Post, Kallulam Taluk,
Kanyakumari District.

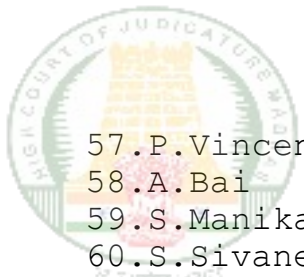
6.The District Collector,

Kanyakumari District,
Nagercoil-62900.

... Respondents 4 to 6/Respondents 4 to 6
/Defendants 4 to 6



- 7.Jalaja
- 8.S.Mini
- 9.T.Kingsly
- 10.S.Vijaya
- 11.Sevaraj
- 12.Sundar Raj
- 13.Chandra
- 14.Sarasam
- 15.Lalitha.R
- 16.Packiaraj
- 17.J.David Raj
- 18.Vasantha
- 19.Sunitha.K
- 20.N.Saraswathy
- 21.Soman
- 22.J.Daisy
- 23.S.Radhakrishnan
- 24.A.Saleen
- 25.Bai
- 26.C.Murugan
- 27.Anusha
- 28.M.Ramesh
- 29.S.Saravana
- 30.J.Vijayalakshmi
- 31.P.Palus
- 32.Mary Pushpam
- 33.P.Anil kumar
- 34.Baby
- 35.Sunitha
- 36.S.Dhas
- 37.G.Usha
- 38.T.Christudhas
- 39.T.Sunitha kumari
- 40.Immanuvel
- 41.J.Sujatha
- 42.C.Isravel
- 43.S.Megala
- 44.P.Nagarajan
- 45.N.Johnson
- 46.T.Thangam
- 47.C.Painkili
- 48.M.Suresh
- 49.R.Sunil
- 50.Suppulakshmi
- 51.C.Vijayan
- 52.M.Leela
- 53.P.Muthupillai
- 54.Ponnesan
- 55.D.Esthakki
- 56.C.Leela



- 57.P.Vincent
- 58.A.Bai
- 59.S.Manikandan
- 60.S.Sivanesan
- 61.P.Rajendran
- 62.V.Santhi
- 63.Santha Bai
- 64.Saraswathy
- 65.Robinson
- 66.Kavitha
- 67.N.Bai
- 68.R.Pappa
- 69.V.Leema Rose
- 70.Ajitha
- 71.George
- 72.M.Selvan
- 73.Raju
- 74.R.Mohan Raj
- 75.N.Geetha
- 76.R.Raj kumar
- 77.P.Soumiya
- 78.R.Latha
- 79.D.Kurusumuthu
- 80.R.Raj
- 81.I.Suja
- 82.L.Anitha
- 83.S.Sivakumar
- 84.T.Ramesh
- 85.The Bishop,

... Respondent 7 to 84/Proposed Party

CSI Diocese,
Bishop House,

Kanyakumari District. ... Respondents/3rd Respondent/
3rd Defendant in both CRPs.

Prayer in CRP.(MD)No.1396 of 2019 :- Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the order and decreetal order in I.A.No.452 of 2017 in I.A.No.242 of 2017 in O.S.No.98 of 2016 on the file of the First Additional District Munsif Court, Kuzhithurai dated 27.02.2017.

Prayer in CRP.(MD)No.1397 of 2019 :- Petition filed under Article 227 of the Constitution of India, to allow the civil revision petition and set aside the order and decreetal order in I.A.No.242 of 2017 in O.S.No.98 of 2016 on the file of the First Additional District Munsif Court, Kuzhithurai dated 07.10.2017.



For Petitioners : Mr.V.M.Balamohan Thambi
For R1 : Mr.Ananth C.Rajesh
For R4 : Mr.J.Gunaseelan Muthiah

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COMMON ORDER

The above civil revision petitions emanate from the proceedings in IA No.452 of 2017 (CRP(MD) No.1396 of 2019) and IA No.242 of 2017 (CRP(MD) No.1397 of 2019) in OS No.98 of 2016.

2.The brief facts are as follows:-

(i) The suit O.S.No.98 of 2016 was filed by the respondents 1 to 3 herein against the petitioners herein as well as the respondents 4 to 6 for an injunction restraining the revision petitioner herein from using the suit property as a burial ground and the respondents 4 to 6 from granting permission to use the property to till the disposal of the above suit.

(ii) The case of the respondents 1 to 3 was that the suit schedule property belongs to the first petitioner. The housing plots belonging to respondents 1 to 3 are situated within the village of Vilavancode under the administration of the fourth respondent herein. The case of the respondents 1 to 3 is that suit schedule property was purchased in the year 2009 for putting up the Church. The suit schedule property is surrounded by over 70 dwelling houses including that of the respondents 1 to 3. In fact, the second respondent's house is located just five feet from the eastern boundary and the house of the first and third respondents is located 30 feet from the eastern boundary of the plaint schedule property. The first respondent would submit that the reason for the purchase was deliberately not made known by the Church. The first petitioner had initially stated that the property was being purchased for providing dwelling houses for the poor people. However, respondents 1 to 3 came to learn that the real purpose was for setting up the cemetery. In and around the year 2014, the first and second petitioners herein, with the guidance of the third defendant, had constructed a compound wall around all the four sides of the property without the fourth respondent panchayat's permission. On 30.08.2015, the board was displayed in the property showing the name, CSI Home Church Cemetery. The respondents 1 to 3 would submit that the cemetery has been set up without getting permission and that apart, the same is too close to their house. The setting up of the cemetery has destroyed the tranquility of the surrounding. Therefore, the respondents 1 to 3 came forward with the suit in question.

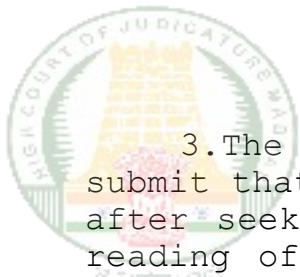


(iii) The revision petitioners had filed a written statement *inter alia* contending that within 100 metres of the suit property, on the west, there are numerous old and new graves with tombs are spread out and used to be a graveyard for years together. Abutting the house of the second respondent, his father is buried 3 metres away from the well situate therein. Inside the suit property, half portion on the north, is set apart for putting up the residential houses for the members of the first petitioner church and the remaining half on the south is to be used as cemetery. The allegation that a lot of noise pollution emanates from the cemetery is absolutely false and respondents 1 to 3 are bound to prove the same. The revision petitioners would further submit that the allegation that they were using the schedule property to convert people is absolutely false. They would submit that the suit is nothing, but to cause nuisance and defamatory intention to religious clash among the people of the locality. Therefore, they sought for dismissal of the suit.

(iv) Pending the suit, the respondents 1 to 3 came forward with the petition for impleading respondents 4 to 81 as parties to the proceedings. The only ground on which the petition is filed is that the revision petitioners had objected that necessary parties were not impleaded. Therefore, they had to be impleaded.

(v) The revision petitioners had filed a counter *inter alia* contending that there was no necessity to implead these persons, as the respondents 1 to 3 have not pleaded that the suit was instituted in the name of the wrong or right plaintiffs. There is no pleading as to why these persons have to be impleaded. These persons, who were sought to be impleaded, have property nearly half a kms away from the suit property and the property of the respondents 1 to 3. The revision petitioners would therefore submit that the respondents 1 to 3 were not able to make out the case as to why all these persons have to be impleaded as party defendants in the suit. Therefore, they sought for dismissal of the application.

(vi) The learned First Additional District Munsif, Kuzhithurai, after hearing the parties allowed the application. The learned District Munsif despite holding that the suit has not been filed in a representative capacity, has proceeded to allow the implead application stating that the application cannot be dismissed on a technical ground. After the order was passed, the revision petitioners herein had filed I.A.No.452 of 2017 to review the order passed, since the revision petitioners were not heard before the orders passed in I.A.No.242 of 2017. The review petition was also dismissed despite the learned Judge holding that the revision petitioners had not been heard. Challenging the same, the revision petitioners/defendants 1 and 2 are before this Court.



3.The learned counsel appearing for the petitioners would submit that the suit has not been filed in a representative capacity after seeking leave of the Court under Order 1 Rule 8 of CPC. A reading of the pleading would clearly show that the suit for bare injunction has been filed on the allegation that the petitioners were setting up the cemetery creating a public nuisance. Once the plaintiffs plead a cause of action that it is a public nuisance, then the suit is not maintainable on the ground of a wrong to an individual right and the same can be filed only in the representative capacity. In support of the arguments, the learned counsel relied on one judgment reported in **2008 4 MLJ 41 (Thambaiya Naidu Vs State of Tamil Nadu, Rep. by Collector of South Arcot, Cuddalore and others)** and another unreported judgment. He would submit that a perusal of the preamble to the order in I.A.No.242 of 2017, would clearly show that the revision petitioners have not been heard before the orders have been passed. The learned counsel would submit that even in the order in I.A.No.452 of 2017 in I.A.No.242 of 2017 the learned Judge has admitted that the revision petitioners have not been heard. However, he has proceeded to dismiss the said application.

4.The learned counsel for the first respondent would submit that the continuance of the cemetery is causing nuisance for all the residents and therefore, in order to have a binding decree all parties were sought to be impleaded. The learned Judge has considered the objection of the petitioners and passed orders and the same does not require any revision. He would therefore pray for dismissal of the revision.

5.Heard the learned counsel appearing on either side and perused the records.

6.A mere perusal of the plaint in O.S.No.98 of 2016 would show that the suit has been filed by the owners of the properties around the suit property, stating that the setting up of the cemetery closed to backyard, would cause nuisance to them. They have also contended that the continuance of the cemetery is a public nuisance. A reading of Section 91 of CPC would indicate that where a public nuisance or any other wrongful act affecting the public is sought to be redressed by filing a suit for declaration and injunction or for any other relief, then it is with the leave of the Court that two or more persons even if they have not suffered any damage, can move a suit. In other words, the suit that is to be filed questioning a public nuisance, can only be in the form of representative suit and the procedure for which is provided in Order 1 Rule 8 of CPC. These ingredients have not been followed in the instant suit.

7.While so, the petitioners in order to overcome this lacuna, have sought to implead all and sundry as parties to the



proceedings. In the counter, the revision petitioner has clearly stated that many of the parties who were sought to be impleaded, are living far away from the suit property. In the judgement of this Court reported in **2008 4 MLJ 41** in the case of **Thambaiya Naidu Vs State of Tamil Nadu and others**, the learned Judge was called upon to consider whether the plaintiff therein could file a suit for mandatory injunction in its individual capacity seeking removal of a hut put up in a public road. The learned Judge after considering the provision of Section 91 of CPC, held as follows:-

as per Section 91(10)(b) C.P.C., a person can institute a suit only with the leave of the Court, but in the case on hand, the plaintiff/appellant has filed the suit for mandatory injunction for a direction to the defendants 1 and 3 to remove the hut put up by the fourth defendant in the suit property without prior leave of the Court. In the absence of any compliance of the provisions of Section 91(1)(b) C.P.C by the plaintiff/appellant, the Lower Appellate Court is right in holding that without the leave of the Court, the plaintiff is not entitled to file a suit of mandatory injunction in his individual capacity. The first question raised by this Court is answered against the plaintiff/appellant and the finding rendered by the Lower Appellate Court in this regard is confirmed.

8. Therefore, in the instant suit, which has been filed without seeking leave of the Court, is hit by the provision of Section 91 of CPC. In these circumstances, the order permitting the impleadment of the proposed plaintiffs is erroneous and the learned District Munsif has overlooked the provision of Section 91 of CPC and Order 1 Rule 8 CPC. Therefore, the order in I.A.No.242 of 2017 requires to be set aside.

9. As regards the order passed in I.A.No.452 of 2017, it is seen that the main ground for filing review is that the revision petitioners have not been heard before the passing of orders in I.A.No.242 of 2017 by the First Additional District Judge. The learned Judge accepts the fact that the petitioners have not been represented but however dismissed the review application on the ground that the order has been reserved on 19.09.2017 and was ultimately delivered on 17.10.2017 during which period, the petitioners have not taken steps to reopen the petition for enquiry. The very fact that once it is proved that the order in I.A.No.242 of 2019 has been passed without hearing the revision petitioners, the learned District Munsif ought to have allowed the review application. The learned Judge has stated as follows in the said judgement:-

It is not in dispute that the petitioners who are the respondents therein had filed their counter in



the said petition. It is true that the petition was taken up for orders on 16.09.2017, when there was no representation on the side of the petitioner in I.A.No.242 of 2017.

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10. In the light of the catagoric admission, the order dismissing the review application is erroneous and is liable to be set aside. Accordingly, these Civil Revision Petitions are allowed and the order dated 07.10.2017 passed in I.A.No.242 of 2017 is set aside and the order dated 27.02.2019 passed in I.A.No.452 of 2017 is also set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

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Sub Assistant Registrar(CS)

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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The First Additional District Munsif,
Kuzhithurai.

+1 CC to M/s.SPL.GP (SR-774[F] dated 07/01/2022)

C.R.P.(MD)Nos.1396 & 1397 of 2019

and

C.M.P.(MD) No.7442 of 2019

Dated: 06.01.2022

nsn(CO)

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