



C.R.P.No.3307 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3307 of 2019
and
C.M.P.No.21450 of 2019

1.P.Mahendran
2.Manimekalai

.. Petitioners

VS

- 1.State of Tamil Nadu
Rep. By the District Collector,
Collector's Office,
Erode – 638 011.
- 2.The Revenue Tahsildar,
Taluk Office,
Anthiyur Taluk,
Erode District.
- 3.The Block Development Officer,
Anthiyur Panchayat Union,
Anthiyur Taluk,
Erode District.
- 4.The District Manager,
Tamil Nadu Prohibition and Excise,
Suriyampalayam,
Vasavi College Post,
Erode District.

5.Sithaiyan

.. Respondents

Petition filed under Article 227 of the Constitution of India to
set aside the fair and decreetal order dated 04.09.2019 made in



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I.A.No.1 of 2019 in CFR No. 3641 of 2019 on the file of the learned
Principal District Munsif Court, Bhavani.

For Petitioners : Mr.S.Shrish
for Mr.N.Manokaran

For Respondents : Mr.B.Tamil Nidhi
Additional Government Pleader
for R1, R2
Mr.S.P.Karthik, GA
for R3
Mr.Sekar for R4

ORDER

The test for an application under Order 1 Rule 8 of CPC is that
(i) there must be numerous persons, (ii) they must be having a
common interest and (iii) they must seek permission of the Court to
sue or to defend, for the benefit of all persons.

2. In the present case, the villagers of Bhrammadesam
Pudur village do not want a liquor vending shop to be opened in
their village. In pursuance thereof, they have sent representation on
several dates. Since the representations were not considered, they
filed a suit in unnumbered CFR No. 3641 of 2019.

3. Along with the said plaint, they moved an application
under Order 1 Rule 8 of the Code of Civil Procedure seeking leave of



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the Court to institute the suit. The said suit was objected by the TASMAC stating that, it is a policy decision of the Government to open liquor shops wherever they want as long as, it is not in contravention of the Tamil Nadu Liquor (Retail Vending) Rules, 2003.

4. A few more villagers objected saying that they wanted the liquor shop to be opened in the Bhrammadesam Village.

5. Considering the arguments on either side, the learned trial Judge dismissed I.A.No.1 of 2019 holding that since it is a policy decision, Order 1 Rule 8 application is not maintainable.

6. Heard Mr.S.Shrish, learned counsel representing Mr.N.Manokaran, learned counsel for the petitioner; Mr.B.TamilNidhi, learned Additional Government Pleader (CS) for respondent nos. 1 and 2, Mr.S.P.Karthik, learned Government Advocate for respondent no. 3 and Mr.Sekar, learned counsel for respondent no. 4.

7. I have already stated what is the principle on which an application under Order 1 Rule 8 should be tried. The test is



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commonality of interest. The petitioners by filing their representations dated 28.06.2019 and 03.07.2019 have shown the commonality in interest. They had also produced the acknowledgement card as plaint document nos. 4 and 5. At the stage of Order 1 Rule 8, the learned Judge is not dealing with the policy matter of the State but is only dealing if there is a commonality interest in the suit. I have gone through the representations which have been placed for my perusal and I am satisfied that there is a commonality in interest and, therefore, the dismissal of the application is wrong.

8. Learned counsel appearing for the TASMACH would submit that the remedy is only by way of a writ petition and not by way of suit. It is trite that where there are more than one remedy, the party can choose that remedy but not simultaneously proceed on both the remedies.

9. It is not the case of learned counsel for TASMACH that the plaintiffs have filed a writ petition also seeking the same relief. In order to substantiate the conclusion that there were more than one remedy the party can avail, learned counsel for the petitioner drew my attention to a judgment of this Court in the case of *Abdul*



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Ghani Sahib and Ors v N.P.R.M.V.R.M.Subramania Chettiar and Ors

reported in AIR 1929 Mad 44, in particular paragraph 8 which reads

as follows:-

"8. Finally, it was argued by Mr.T.M.Ramaswami Iyer, the learned vakil for the respondent, that the more appropriate remedy that the plaintiffs would be entitled to is to file a suit, after obtaining the necessary sanction, under Section 92, Civil P.C. I will assume for the present that the plaintiffs would be entitled to that remedy also; but as remarked by Becon, Vice Chancellor in 10 Ch.Dn.153

there may be other remedies, there may be 500 or 5000 other remedies, but if this one remedy which the appellant has invoked be one of them there is no reason why he should have recourse to this one out of the 5000."

10. A perusal of the same shows that as long as the party is entitled to invoke a remedy a Court cannot non-suit the party saying such remedy cannot be invoked because there is an alternative remedy. The best judge to choose a course of remedy are the plaintiff themselves and they have chosen to file a suit.

11. The next point urged by learned counsel appearing for the TASMACH is that on dismissal of Order 1 Rule 8 application, a liquor vending shop has been opened in the village. The event has happened pending the litigation before this Court and, therefore, it



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is always open to the plaintiff to amend the plaint and seek for mandatory injunction for closure of the shop. Therefore, the dismissal of application on the grounds not contemplated under Order 1 Rule 8, namely that though the plaintiffs are having interest in common, they are not entitled to invoke the remedy by way of a suit, is untenable. It is accordingly set aside. I.A.No.1 of 2019 in CFR No. 3641 of 2019 stands allowed. Order 1 Rule 8 permission is granted to the petitioners. The trial Court shall now number the suit and take it up for disposal in accordance with law. It is open to the petitioners/ plaintiffs to amend the plaint, if they so desire.

12. This civil revision petition stands allowed with above observations. No costs. Connected miscellaneous petition is closed.

12.07.2023

Index:Yes/No

Neutral Citation:Yes/No

ssm

To

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2.The Revenue Tahsildar,
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3.The Block Development Officer,
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5.The learned Principal District Munsif Court,
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V. LAKSHMINARAYANAN,J.

ssm

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