

(1993) 07 MAD CK 0008
In the Madras High Court
Case No : Appeal No. 104 of 1991

A. Peter and 8 others

APPELLANT

Vs

Royappan and 7 others

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(A)

Citation : (1993) 07 MAD CK 0008

Hon'ble Judges : Thangamani, J;Srinivasan, J

Bench : Division Bench

Advocate : V. Raghavachari and V. Sumathi, for the Appellant; M.N. Padmanabhan, S. Geethanjali, Aiyar and Dolia, M.N. Muthukumaran, V. Ramajagadeesan, P. Rathinadurai, R. Thillaivilalan, Ramana Reddy and S.V. Jayaraman, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—This appeal is filed by the defendants 1,3,5 to 7 and 8 to 11 against the judgment and decree passed by the Principal

Subordinate Judge, Cuddalore. In the view we are taking, it is not necessary to set out the facts in detail. In short, the suit relates to the affairs of

the Society called Annai Velankanni Educational and Social Society and its Educational Institution, called Annai Velankanni Polytechnic situate at

Anguchettipalayam, run by the said Society situate at Panruti. The said fact has been stated in paragraph 3(1) of the plaint itself. The prayers in the

suit are for declaration that the first defendant is not entitled to hold office of the respondent Society or in the alternative to remove him from the

office, for injunction restraining the first defendant from acting as the President or in any other capacity, for injunction restraining the first defendant

from acting as the Correspondent of the said educational institution, for

appointment of Receiver to take accounts with regard to the receipts and expenditure of the Society by the first defendant and to take over the Management of the Society and its educational institutions, for declaration that plaintiffs 1 to 4 continue to be members of the society, for declaration that the defendants 5 to 12 are not members of the society and injunction restraining them from acting as such.

2. The suit was decreed by the Principal Sub Judge. No objection was raised in the trial court that the Society must be impleaded as a party to the suit and it is a necessary party. In this appeal, an objection was raised by learned counsel for the appellants that the suit is not maintainable as framed inasmuch as the Society has not been impleaded as a party.

3. It is not necessary to refer to the arguments advanced by both sides on that aspects of the matter. Suffice it to point out that whatever may be

the effect of prayers in (a) to (c) and (f) in the plaint, as regards prayers (a) and the first part of prayer (e), the Society is a necessary party. Prayer

(d) is for appointment of Receiver to take accounts with regard to receipts and expenditure of the Society and to take over the Management of the

Society and its institution. Prayer (e) is for declaration that plaintiffs 1 to 4 continue to be the members of the Society. Hence with regard to those

two prayers, the Society is a necessary party. Unfortunately, it has not been impleaded as a party in the suit and trial has proceeded as no

objection was raised by the defendants.

4. Now that the objection is raised by the defendants, we are obliged to consider the same and by our order, dated 24.5.1993, we impleaded the

Society as a party to the suit. We directed that the Society should be represented by defendants 3 and 4 who were in Management of the Society

along with the Receiver appointed by the decree. We did so in order to avoid delay in hearing the appeal, while at the same time, we observed that

the question whether the society is a necessary party to the suit could be heard later and decided. As per our direction, the Society was served

with notice and counsel is appearing for the Society, today. He contended that the Society is a necessary party to the suit and it ought to have been

impleaded. Learned counsel also pointed out that the Society having been impleaded by this Court the Procedure prescribed under O. I, R. 10(A)

of Civil procedure Code, should be followed. We are of the view that the

submission made by learned counsel for the Society is well founded. As the Society has been impleaded, it should be given an opportunity to state its case. At first, the plaintiffs should amend the plaint to when the Society is a party to the suit and include some averments in the body of the plaint with regard to the Society. An opportunity must be given to the Society and the other defendants to file written statement. Thereafter, the parties should be allowed to let in evidence on those pleadings.

5. Learned counsel for the Society has referred to the judgments in *Uzir Alisardar v. Savai Pehra* (ILR 43 Cal 938) and *Venkata Radhakrishna*

Rao v. Venkata Rao (ILR 43 Mad 713) in support of this position that once a new party has been added at the appellate stage, it should be given

an opportunity to file its pleadings and let in evidence. The principles laid down in these judgments will apply..

6. During the pendency of the appeal, certain directions were given by this Court with regard to admission of the students in the educational

institution run by the Society by an order dated 2.7.1992. One of us sitting singly, appointed Committee consisting of the Principal of the Institution

and the Heads of Departments of General Engineering, Civil Engineering, Mechanical Engineering and Computer Science It was directed that the

Committee shall select the students for admission on the basis of merits. That order was confirmed by a Division Bench in Letters Patent Appeal

No. 124 of 1992. For the subsequent year, similar order was passed on 30.4.1993. In that order, it is said that it shall be in force for the year

1993-1994 or until the disposal of the First Appeal whichever is earlier. As the appeal is now disposed of, we are obliged to give directions in

this regard. We direct that the said arrangement which was prescribed by the order dated 2.7.1992 in C.M.P. Nos. 6242,7288 and 821: of 1992

shall be in force for this year viz. 1993-1994 also. In the result, we set aside the judgment and decree of the trial court and remand the(sic)for fresh

disposal. We are informed that the Principal Sub Judge, Cuddalore, is having heavy work in his court in view of the fact that he is dealing with

matrimonial cases motor accident claims and land acquisition cases, apart from Sessions work, besides the civil work. We are also informed that

the Additional Sub Judge is not having so much work as he is not having the special jurisdiction referred to above. Hence, we direct the suit to

taken by the Additional Sub Judge, Cuddalore, 15.7.1993. The parties are directed to appeal; before the Additional Sub Judge, Cuddalore,

15.7.1993. We direct the plaintiffs to file amended plaint on or before 19.7.1993 in Court of the Additional Sub Judge, Cuddalore the defendants

including the Society must file their written statements on or before 4.8.1993. The Additional Sub Judge shall frame issues in the suit on or before

9.8.1993. The suit shall be taken up for trial by 16.8.1993 and shall proceed day-today and the trial shall be concluded and the judgment rendered

in the suit on or before 15.10.1993. The Additional Sub Judge, Cuddalore, and the parties shall abide by the above time schedule strictly. The

appeal is allowed on the above terms, and the suit is remanded for fresh disposal. There will be no order as to costs. The court fee paid on the

appeal Memo shall be refunded to the appellants.