

(1998) 02 MAD CK 0005

In the Madras High Court

Case No : C.R.P. No's. 2726 and 3734 of 1993 and C.M.P. No. 12734 of 1993

Ahamadullah and another

APPELLANT

Vs

Ramaswamy Udayar and 10 others

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Transfer of Property Act, 1882 — Section 53

Citation : (1998) 02 MAD CK 0005

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : P.T. Asha, for the Appellant; A.K. Kumarasamy for RR 1 to 9, Mr. B. Mani, Govt. Advocate for RR 10 and 11, for the Respondent

Judgement

R. Balasubramanian, J.—The revision petitioners are the plaintiffs in O.S. No. 481/84 on the file of the District Munsif, Perambalur. The

respondents are the defendants in the said suit. Two applications viz., I.A. No. 730/92 and I.A. No. 731/92 came to be filed in that suit, both

under Order 1, Rule 8, C.P.C. First application was for permission to permit the plaintiffs to sue in a representative capacity and the second

application was to sue the defendants in a representative capacity. Both the applications were dismissed and hence the present two revisions

before this Court. I hear Miss. Asha, learned counsel appearing for the revisions petitions in each of these two revisions and Mr. A.K.

Kumarasamy, learned counsel appearing for the respondents in each of these two revisions. According to the learned counsel for the revision

petitioners, the present applications in the suit, though came to be filed belatedly, yet it arose only on account of the objection taken by the

defendants in the written statement. By allowing these two applications, only fresh parties are added to the suit but the capacity of the plaintiffs as well as the defendants in the suit in which they were brought before Court alone is sought to be attacked. Under these circumstances, the submission of the learned counsel for the revision petitioners is that the trial Judge had committed an error in law as well as on facts in dismissing the applications. The learned counsel also submitted that there are enough pleadings in the plaint itself which show that the suit as filed is only in a representative capacity though not the permission under Order 1, Rule 8 was not obtained. Opposing these submission, Mr. A.K. Kumarasamy, learned counsel appearing for the respondents would state that if these applications were allowed it would have the effect of bringing new parties before the Court as plaintiffs as well as the defendants. If as on the date on which the respective applications came to be filed before the Court, the relief sought for in the plaint as against the parties to be brought on record is barred by limitation, then the present applications could not be allowed in law. In this context, Mr. A.K. Kumarasamy, learned counsel for the respondents brought to my notice a judgment of a learned single Judge of this Court in Chinnaswami Naicker Vs. Kandasami Gounder and Others, As against this the learned counsel for the revision petitioners brought to my notice a judgment of this Court rendered by two learned Judges in Seth Nandaramdas Atmaram by Agent Hemrajmul Vs. Zulika Bibi and Others,

2. In the light of the submissions made by the learned counsel on either side, I perused the pleadings as well as the order under challenge. I find from the perusal of the plaint necessary averments have been made that the suit is laid in the general interest of all the Muslims concerned and the persons who are sued are also sued in the general interest of all the Hindu community people concerned. Therefore, I am of the view that the plaint contains necessary averments to show that the plaintiffs and the defendants were before court in a representative capacity. However, as mandated by Order 1, Rule 8 of C.P.C. The permission of the Court had not been obtained. Only to get over this legal objection the present applications came to be filed. It is no doubt true that in Chinnaswami Naicker Vs. Kandasami Gounder and Others, it has been held that application for

amendment of plaint so as to make the suit a representative one must be made within the time allowed for institution of the suit. It also appears that

the earlier judgment of this Court in Seth Nandaramdas Atmaram by Agent Hemrajmul Vs. Zulika Bibi and Others, was not been brought to the

notice of the learned Judge, who decided the later case. In the earlier judgment the facts are that the suit was filed to set aside certain order raising

attachment and for a declaration that the properties are liable to be attached and sold in execution of a decree. In substance, it was found to be a

suit u/s 53 of the Transfer of Property Act. When such a suit is filed it should have been filed for the benefit of all the creditors and not merely on

behalf of one creditor alone. Objection seems to have been taken about the framing of the suit in the individual capacity. Therefore, an application

under Order 1, Rule 8 of C.P.C. was filed by the plaintiffs to amend the plaint so as to make it appear that it was filed for and on behalf of the

general creditors. Stating that on the day when the order came to be passed in that application, the claim was barred, the suit itself was dismissed.

That decree came to be challenged before this Court. This Court in dealing with the question held as follows:

The result of the foregoing discussion is that the amendment of the plaint by which the suit was converted into a representative action under O.1,

R.8, does not involve the addition of fresh parties. It is true that the capacity of the plaintiff changed, for, after the amendment he became a

representative of a body of persons consisting of himself and the other creditors; but it is impossible to maintain, in the face of the decision of the

Privy Council in Peary Mohan Mookerjee v. Narendra Nath Mookerjee (37 Cal. 229) not to mention other cases, that the amendment introduced

fresh parties and having been made after the period of limitation, the suit is barred.

3. Under these circumstances, I am of the opinion that the arguments advanced by Mr. A.K. Kumarasamy, learned counsel appearing for the

respondents on the plea of limitation cannot be sustained Accordingly, both the revisions are allowed. Consequently, the order I.A. Nos. 730 and

731/92 are set aside and instead there shall be an order as prayed for in those two applications. No costs. In view of the disposal of the amin

revisions in C.R.P. No. 12734/93 and the same is closed.