

(1951) 07 MAD CK 0011

In the Madras High Court

Case No : Civil Revision Petition No. 452 of 1949

Arumugha Naicker and Others

APPELLANT

Vs

A. Kuppuswami Pillai

RESPONDENT

Date of Decision : 20-07-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : AIR 1952 Mad 115 : (1952) 65 LW 150 : (1951) 2 MLJ 564

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : S. Balasinga Satya Nadar and N.C. Rangaswami, for the Appellant;
D. Narasaraju and T. Govindarajulu Mudaliar, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddi, J.—The question that falls to be decided in this revision petition is whether a representative action under Order 1, Rule 8,

C. P. C., can be brought for rendition of accounts by certain members of an unregistered society on their own behalf and on behalf of the other

members of the society. In this case, a suit was filed under O. 1, Rule 8 by six members of an unregistered Sabha on their own behalf and of the

members of the Sabha for account of the monies collected and spent by the first defendant on behalf of all of them for prosecuting a litigation. One

of the defences was that the suit as framed was not maintainable as the procedure laid down under Order 1, Rule 8 is not available in respect of

actions for recovery of money or in respect of liability on contract or tort. The trial Court decreed the suit overruling this objection. The matter was

taken to the Pun Bench of the Court of Small Causes by new trial application. The learned Judges upholding the preliminary objection as regards

the maintainability of the suit reversed the decree and the judgment of the trial Court and dismissed the suit. The ground of this decision was that

the provisions of Order 1, Rule 8 did not govern a suit for the recovery of a debt or to money claims or to liability on contract or tort. In support of

the view taken by them they placed reliance on two rulings of this Court, one in Rathnaswami Nadar and Others Vs. The Prince of Arcot's

Endowments under the control of His Highness the Prince of Arcot, G.C.I.E. represented by his authorised agent Shamsul Ulama Moulvi

Mohammad Abdur Rahman Sahib Bahadur "Shakeer", and the other in ""Travancore National Bank v. Trana Bank Union" AIR 1943 Mad 530.

But a careful reading of these decisions shows that they do not lend any support to the view taken by the lower Court.

2. In Rathnaswami Nadar and Others Vs. The Prince of Arcot's Endowments under the control of His Highness the Prince of Arcot, G.C.I.E.

represented by his authorised agent Shamsul Ulama Moulvi Mohammad Abdur Rahman Sahib Bahadur "Shakeer", , a few of the villagers were

sued under Order 1, Rule 8, as representing all the villagers for various reliefs including a relief for mesne profits. One of the questions that arose

for consideration before the Bench who heard the appeal was whether a decree could be granted for a consolidated sum as representing the

mesne profits in a suit under Order 1, Rule 8. The learned Judges while holding that there was sufficient community of interest amongst the

defendants to attract the provisions Order 1, Rule 8, observed that a decree for mesne profits could not be granted against the defendants sued in

a representative capacity for the reason that the procedure prescribed under Order 1, Rule 8 does not apply to money claims or liabilities on

contract or tort. The observations of the learned Judges at page 151 would show that they did not mean to lay down that the provisions of Order

1, Rule 8 could not be availed of even by the plaintiffs to bring a suit in a representative capacity for laying an action to recover a debt or for

rendition of accounts. They remarked:

In the present case, the Judge has granted a decree for a consolidated sum as representing the mesne profits. It is to be held that each individual of

the 150 odd villages is liable for mesne profits in respect of the entire land, although under the karaiyedu form of enjoyment no ryot is in occupation

of more than a fractional share of the whole land. The injustice of such a decree is obvious and the principle of the English decision already quoted clearly applies.

The learned Judges followed the principle enunciated in two English decisions in "Hardie and Lane Limited v. Chilton" (1928) 1 K. B. 663 and

"Walker v. Sur" 1914 2 K. B. 930.

3. In "Hardie and Lane Limited v. Chilton" (1928) 1 K. B. 663 the plaintiffs who were members of an association of motor dealers and

manufacturers which was an unregistered trade union brought a suit against some of the members on their own behalf and on behalf of all the other

members of the association for damages under Order 16, Rule 9 of the Rules of the Supreme Court which is similar to Order 1, Rule 8, C. P. C. It

was held that the defendants could not be sued in a representative capacity as there was no ground for holding that the members of the association

had community of interest either in the action or in the defence to it.

4. In "Walker V. Sur" 1914 2 K.B. 930 the plaintiff sued four members of an unincorporated religious society on their own behalf and on behalf

or other members for recovering money for professional services, etc., rendered to the society. It was decided there that the provisions of Order

16, Rule 9 of the Supreme Court rules would not govern it as an action for a debt against the defendants, would not come within, the provisions of

Order 16, Rule 9. The observations contained in the speech of Buckley, L. J., at page 935 are pertinent. He observed:

If this order had not been appealed, and the plaintiff had gone to trial and asked for judgment what judgment could he have obtained? At the most

an order against these four persons. It is said that these four persons together with many others, making up about 1,800 in all, are members of the

society called "The Brotherhood of St. John of God", and that that body of persons or a smaller number -- say 1,000 persons -- own property in

Yorkshire, and that most or all of the other members of the brotherhood are abroad and, being outside the Jurisdiction, cannot be reached. The

plaintiff says "I want to have execution against the property in Yorkshire. But when he had obtained his judgment he could have had execution only

against the share of these four persons in that property. There is nothing representative about that." The same Law Lord remarked again: "If all can

effectually be sued, it would be strange if all could not effectually defend. Can the rule mean that while all may be sued by representatives they cannot defend unless the Court gives authority so to do?

5. It is abundantly clear from these decisions that the procedure prescribed for a representative action cannot be utilised for filing a suit against some persons on their own behalf and as representing other persons for the recovery of debts or in respect of liability on contract or tort, for the reason that there is no community of interest amongst the defendants so far as such an action is concerned. The difficulties envisaged in those decisions would not arise in a suit brought in a representative capacity by a few of the members of an unregistered body on their own behalf and on behalf of others.

6. The ""Travancore National Bank v. Trana Bank Union" AIR 1943 Mad 530 was a case where an unregistered union of employees was sued on an agreement signed for and on behalf of the members by one of the members along with the member who signed the agreement. It was held by Somayya, J., adopting the reasoning in "Ratnasami Nadar v. Price of Arcot Endowments" 1938 1 M.L.J. 148 that under the law an unincorporated body which cannot be sued as such for the recovery of a debt or on contract cannot be sued by resorting to the procedure under Order 1, Rule 8. The learned Judge also referred to the decision in "Walker v. Sur" 1914 2 K.B.930. It is clear that this ruling does not in any way support the conclusion reached by the lower Court.

7. In my opinion, the considerations that weighed with the learned Judges in the case cited above in reaching those conclusions have no relevancy in a case of representative action by the plaintiffs. The reason which induced the learned Judges of the Court of Small Causes to apply the rule of law stated in those cases to suits by plaintiffs suing in a representative capacity was that the difficulties pointed out in those cases would apply equally to cases like the present one. According to the learned Judges, the Insurmountable difficulty will be the one to be experienced by the defendants in the execution of the decree for costs when the suit is dismissed with costs. I must say that this reasoning does not commend itself to me. Such difficulties can be avoided by granting a decree for costs against the plaintiffs who actually filed the suit. Further, circumspection may also

be exercised by Courts in granting leave to file such representative suits under Order 1 Rule 8. On the other hand, if members of an unregistered

society or union are not permitted to file representative actions for recovering monies due to unregistered societies or unions under the provisions

of Order 1, Rule 8, there will be great hardship to such a body. Dishonest members of unregistered societies or unions can walk away with

impunity with funds belonging to such societies or unions.

8. Further no case has been brought to my notice where a suit filed in a representative character for the recovery of money or in respect of liability

based on contract or tort has been thrown out on the ground that the provisions of Order 1, Rule 8 are not applicable to such suits. On the other

hand some decisions, both English and Indian, in which the procedure prescribed under Order 1, Rule 8 was followed without exception being

taken to have been brought to my notice -- for instance See "Marrs v. Thompson" (1902) 86 L. T. 759 and "Bhicoobai v. Hariba Raghuji" 42

Bom 656. The cases bearing on this question have been collected in the Annual Practice 1949, volume 1, page 268. The two undermentioned

cases throw a flood of light on the point for determination here.

9. In "Mohamed Nathubhai v. Husen" 22 Bom 729 a Bench of the Bombay High Court directed the plaintiffs to amend the plaint in a suit against

the defendant for the recovery of money had and received by suing with the permission of the Court on behalf of the community which authorised

the plaintiff to file the suit u/s 30, C.P.C., corresponding to Order 1, Rule 8 of the present Civil Procedure Code, so that the suit could be

maintained in the Court of the Subordinate Judge. No doubt, the question was not specifically raised as to whether in such a suit the provisions of

Order 1, Rule 8 could be resorted to. But it shows that the learned Judges thought that the provisions relating to representative suits could be

availed of by the plaintiffs in suits based on money claims.

10. In "Muhammadan Association, Meerut v. Bakshiram" 6 All 284 a suit by the Muhammadan Association of Meerut in its own name by the

Secretary was held to be not competent as it had not "per se" any status in law to sue. But it was observed that had its members empowered one

or more of its number to act for it in the manner provided in Section 30, C.P.C., it may be that the Court would have accorded the permission

therein mentioned.

11. These rulings show that a doubt could not be entertained as regards the applicability of the provisions of Order 1, Rule 8, C.P.C., to suits

brought in a representative capacity for recovery of debts or for rendition of accounts.

12. Mulla at page 507 of his commentary on the Civil Procedure Code, Edn., 1941 says:

The secretary of a club or other association cannot sue alone in respect of a matter in which the association is interested even if he is authorised so

to do by a resolution of the members of the association. The suit must be brought by all the members of the association or by the secretary on his

own behalf and on behalf of the other members under this rule. Therefore, if the treasurer of an association misappropriates the funds of the

association no one member can sue alone to recover the amounts misappropriated though he may be authorised to do so by a resolution of the

association. The suit must be brought by all the members or by any one member on his own behalf and on behalf of the other members.

In support of this proposition "Mahammad Nathubhai v. Husen" 22 Bom 729 and "Muhammadan Association of Meerat v. Bakshiram" 6 All. 284

have been cited. I entirely agree with this statement of law.

13. In my opinion, a suit can be brought for rendition of accounts in a representative capacity under the provisions of Order 1, Rule 8. It follows,

therefore, that the order of the Court of Small Causes with whom the preliminary objection as regards the maintainability of the suit prevailed is set

aside. The other points raised before the lower Court were not pressed before me, and as no other question arises for consideration, the decree

and judgment of the trial Judge are restored and the civil revision petition allowed. The petitioners will get their costs throughout.