

(1924) 10 MAD CK 0028
In the Madras High Court

Haji Sahib Hameed Labbai

APPELLANT

Vs

S. Mahamad Khather Pillai Marakayar and Others

RESPONDENT

Date of Decision : 17-10-1924

Acts Referred:

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

Citation : AIR 1925 Mad 985

Hon'ble Judges : Srinivasa Iyengar, J;Srinivasa Aiyanger, J

Bench : Division Bench

Judgement

Srinivasa Iyengar, J.—This is a civil revision petition by the defendant in a suit now pending before the District Munsif's Court at

Paramakudi to revise an order made by the District Munsif allowing the plaintiffs to sue under Order 1, Rule 8 of the C.P.C. in a representative

capacity on behalf of all the worshippers at a mosque. The contention on behalf of the defendant is twofold. It is stated that there is a large body of

worshippers who have not agreed with the plaintiffs either in the institution of the suit or in the proceedings that led up to it, and that, therefore, it

cannot be stated that all the worshippers at this mosque have the same interest. It seems to me that, if the construction of the terms of. Order 1,

Section 8, C.P.C., should be that it is only where all the members of the body are of the same opinion with regard to the litigation as the plaintiffs

that the rule should be applied, then the provision contained in the rule would be practically useless. Most of the cases that come up before Courts

in which the provision contained in this rule is invoked are cases of temples or mosques in which we know that there are always two factions, one

opposed to the other. If it should be stated that this rule should be applied only in cases where the whole body is of the same opinion, then, it

follows that the rule cannot be applied to such cases at all. Further, who is to ascertain and determine in such cases that all the persons on whose

behalf the suit is sought to be instituted are of the same opinion? And what is the strength of the minority which would or should be deemed

sufficient by the Court for saying that in these circumstances, the strife should not be allowed to be instituted as a representative suit? I believe the

true principle underlying this rule is that the suit should in form be constituted into a representative suit merely to prevent the defendant from being

vexed and molested, as he may well be, by similar suits by other persons of the body. For the application of this principle it is really unnecessary to

determine whether or not all the members of the body on whose behalf the suit is sought to be instituted are of the same opinion. The order only

means this; that all the members of the body on whose behalf the suit would, on the passing of the order, be constituted into a representative suit,

would be prevented thereafter from instituting any proceedings on the cause of action alleged in the plaint; and such body being an indefinite body

and the order being given only to sue in respect of all persons" having the same interest, the order would have the effect only of preventing

multiplicity of suits and would not be calculated in any manner or to any extent to prejudice the rights of any of the worshippers or of the defendant.

I have been referred to the decision in *Harkisondas Shivilal v. Chhaganlal Narsidas* (1916) 40 Bom. 158 but reading the case I cannot say that the

learned Judges really based their decision on the view they took of the meaning of the rule in question. However, that may be, so far as I am

concerned, I feel bound to follow the decision of *Oldfield and Sadasiva Iyer, JJ.*, in *Katha Pillai v. Kanakasundaram Pillai* (1918) 24 M.L.T. 20. I

agree with the construction placed by these learned Judges on the rule.

2. It, therefore, follows that the order of the District Munsif was right. But even if I thought the order was wrong, I should not have been disposed

in the least to interfere in such a case as this, because there is no reason why such wrong order should not in due course be set right in appeal and

no reason whatever why this Court should interfere at this stage.

3. In the result, the civil revision petition is dismissed with costs.