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(2010) 11 MAD CK 0425

In the Madras High Court

Case No : C.R.P. (PD) No. 1744 of 2009 and M.P. No. 1 of 2009

Karuppa Gounder and Easwaran — APPELLANT

Vs

Appavoo, Kuppannan, Selvam and Nallamuthu — RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 227

Citation : (2011) 2 MLJ 212

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : N. Manokaran, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—Heard Mr. N. Manokaran, learned Counsel appearing for the Petitioners.

2. This Revision has been filed under Article 227 of the Constitution of India against the fair and decreetal order dated 27.11.2008 made in I.A. No. 161 of 2008 in O.S. No. 34 of 2008 on the file of the District Munsif Court, Tiruchengode. This Suit was filed for granting leave to the Plaintiffs to file and prosecute the Suit against the Defendants 1 to 4 for themselves and as representatives of the hamlet of Pulla Goundanpatty, Arundhadhiar Colony, Tiruchengode Taluk and interdicting the Defendants for themselves and as representatives for the residents of hamlet of Pullangoundampatty, Arunthathiar Colony, Pullagoundampatty village, Tiruchengode Taluk by way of permanent injunction from in any way interfering with the Plaintiffs free use of the three suit cart tracks by taking their men, cattle and vehicles to reach their lands in punjai pudupalayam village.

3. The Petitioners filed I.A. No. 161 of 2008 under Order 1 Rule 8 CPC to permit them to sue the Respondents/Defendants1 to 4 individually and as

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representatives of the entire body of the residents consisting of more than thirty families of hamlet of Pulla Goundampatty, Arundhadhir colony. The Defendants 1 to 4 resisted the claim both on merits and also stating that they are not the representatives of the village.

4. In the Suit, an objection was filed by 28 persons stating that they are the persons residing in Arundhadhiar Street in Pulla Goundampatty and alleging that the second Petitioner herein had purchased two houses which were constructed and allotted by the Government to the Arundhadhiar and through that land, he is passing to his agricultural land and the people of that area are objecting to the same. After this objection was placed before the Court by the 28 persons, the Petitioners filed a memo stating that the objections raised by the 28 persons was in a piece of paper and no notice has been served on the Petitioners and none of the objectors have signed and none of the 28 persons have objected to filing of the Suit arraying the Defendants in the representative capacity of the people of the hamlet of Pulla Goundanpatty.

5. The trial Court by its order dated 27.11.2008, dismissed the petition and granted liberty to the Petitioners to file a fresh petition impleading the persons who are all having interest over the property. Aggrieved by the said order, the present Revision Petition has been filed.

6. The learned Counsel for the Petitioner submitted that the trial Court erred in placing much reliance on the objections alleged to have been filed by a group of persons without their signatures and the trial Court ought to have seen that the alleged objection is not to the petition filed under Order 1 Rule 8 CPC and the observation of the trial Court is beyond the scope of Order 1 Rule 8 CPC.

7. In support of his contentions, the learned Counsel for the Petitioners placed reliance on the following decisions:

1. Kodia Goundar and Another Vs. Velandi Goundar and Others,

2. Narayani Kamalakshi and Others Vs. Kunchiyan Bahulayan and Others,

3. The Assistant Commissioner, Hindu Religiousand Charitable Endowment, Salem and Others Vs. Nattainai K.S. Ellappa Mudaliar and Others,

4. Uma Gupta Vs. Mahesh Kumar Prahladka,

5. Nakuleswar Paul Vs. State of Tripura and Others,

6. Kangayam Taluk, rep. by C.D. Dhandapani and Others Vs. Kangayam Taluk, rep. by M. Rangasami and Others,

7. Awadesh Ozha and Others Vs. Ramchandra Mourya and Others,

8. Though the Respondents have been served and their names are printed in the cause list, they have neither appeared in person nor entered appearance though counsel.

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9. The object for which Order 1 Rule 8 CPC has been enacted is to facilitate the decision of questions in which number of persons are interested. For a representative suit the permission of the Court under Order 1 Rule 8 CPC is mandatory. There is duty cast on the Court to follow meticulously the procedure under Order 1 Rule 8. The Full Bench of this Court in the case of KODIA GOUNDAR referred supra held that a party to such a Suit is therefore one who is impleaded as a party or one who on an Application under Order 1 Rule (8) Sub-rule 2 CPC is brought on record that is, one who is ''eo nomine'' made a party. The others who are not brought on record can be only deemed to be parties and will not be parties as such.

10. The Hon''ble Full Bench further held that the condition necessary for the maintainability of a representative suit is that the persons on whose behalf the suit is instituted must have the same interest. The interest must be common to them all or they must have a common grievance, which they seek to get redressed. Community of interest is therefore essential and it is a condition precedent for bringing a representative suit. The right of the claim which they seek to establish in the suit must be one which is common to them all and each individual among the body of persons must be interested in the litigation. That on plain language of order 1 Rule 8 CPC, the principal requirement to bring the Suit within that rule is the sameness of interest of the numerous persons on whose behalf or for whose benefit the suit is instituted.

11. His Lordship Mr. Justice M. Srinivasan (as he then was) in The Assistant Commissioner, Hindu Religious And Charitable Endowment and Ors. Salem v. Nattamai K.S. Ellappa Mudaliar and Ors. reported in AIR 1987 Mad 187, while considering the scope of Order 1 Rule 8, held as follows:

9.A person cannot seek to advance the claims of a group of persons or community without adopting the procedure under Order 1, Rule 8, Code of Civil Procedure, if the relief is prayed for only on the basis of the rights of the community as such. A distinction has to be maintained between cases where the individual put forward a right which he ha acquired as a member of a community and cases where the right of the community is put forward in the suit. If it is the former, the individual is not debarred from maintaining the suit in his own right in respect of a wrong done to him even though the act complained of may also be injuries to some other persons having the same right. If it is the latter, the procedure under Order 1, Rule 8, CPC has to be followed and without doing so, no relief could be granted to the individual concerned.

21. Where the Plaintiff''s are putting forward the rights of the community as such and claiming themselves to be the chosen representatives of the community the suit would not be maintainable in the absence of compliance with R.8 of O.1.

12. In the present case it is seen that the Petitioner has complied with the provisions of Order 1 Rule 8 CPC by effecting publications and the named Defendants/ Respondents 1 to 4 herein have also submitted their objections. At

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this stage the trial Court was faced with a situation where it received a petition/ objection with names of 28 persons. Copy of the said objection has been filed in the typed set of papers and on a perusal of the same, it is seen that the objections conveyed therein relates to the Petitioners'' right to use the Suit property as pathway to reach his lands. The objectors have stated that the second Petitioner has purchased two houses constructed by the Government for the Arundhadhiar and is using the same as pathway to reach his agricultural land. Thus the objection essentially is on merits of the Suit claim and technically it is not an objection to the Application under Order 1 Rule 8 CPC, wherein the Petitioners sought for permission to sue the Respondents 1 to 4 as representatives of the people of the hamlet of Pullagouondanpatty, Arundhadhiar Colony.

13. Be that it it may, if the object behind Order 1 Rule 8 CPC is looked into, that a person who either supports or oppose the claim of the Plaintiff should be heard in the matter since a decree passed in a Suit in a representative capacity may bind the person who is not actually impleaded as party Defendant by name. This Court in The Victoria Edward Hall v. M. Samraj 2001 (3) CTC 129, in paragraph No. 11, has held as follows:

11. It is relevant to point that a duty is case on the Court to follow the procedure prescribed under Order 1, Rule 8 CPC Irrespective of the fact as to whether the Defendant or Defendants present before the Court to safeguard the interest of the persons who are not present before Court a petition under Order 1,Rule 8, CPC for grant of leave of Court to file a suit in representative capacity has to be filed by the first Respondent herein.

14. Therefore, if the instant case is looked into from the said angle, interest of justice requires that the persons who are names in the objection petition namely 28 of them should be impleaded as parties to the Suit. Since these persons have raised objections as regards the propriety of the Petitioners right to use a particular property as pathway to reach his agricultural land, it is but appropriate that all 28 of them are impleaded as Defendants to the Suit. However, the Court below without resorting to such procedure, dismissed the Petition and granted liberty for the Petitioner to file a fresh petition by impleading parties. In my view, this procedure need not be resorted to as it would result in multiplicity of proceedings and further delay the disposal of the Suit. In order to do substantial justice, the objectors have to be necessarily made as parties to the Suit. From the tenor of the objection given, it appears that they have been opposing the claim of the Petitioners on merits. Therefore, it is necessary that these objectors are also impleaded as Defendants in order to fulfill the mandatory requirement under Order 1 Rule 8 CPC. Though it is contended that the objection by the 28 persons is on the merits of the Suit claim and not as regards the application under Order 1 Rule 8 CPC, ends of justice would be met only if they are impleaded as Defendants, as any decree, if granted would have an effect on those objectors, who claim to be residents of the said hamlet.

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15. In the result, the above Civil Revision Petition stands allowed and the order passed by the learned trial Judge is set aside with a direction to the Petitioner to implead all the 28 persons whose names are found in the Objection Petition as Defendants 5 to 33 in the Suit within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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