
(1977) 03 KAR CK 0003
In the Karnataka High Court
Case No : CRP. 1902 of 1976

Monnappa

APPELLANT

Vs

Chief Secretary, Govt. of Karnataka and Another

RESPONDENT

Date of Decision : 30-03-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 93

Citation : (1977) 2 KarLJ 368

Hon'ble Judges : Venkatachaliah, J

Judgement

1. This Civil Revision Petition under Sec. 115 of the CPC by the plaintiff arises out of and is directed against the order dt. 4-10-1976 on I.A. No.VII in OS. 200 of 1974 on the file of the Principal Munsiff at Virajpet, by which the learned munsiff declined to allow an amendment seeking to include an alternative relief in the suit.

2. Plaintiff brought the suit for a declaration that he was the owner of the land concerned in the proceedings and that, in the alternative, he had acquired a right of way over the same and for a consequential relief of injunction. By I.A. VII he sought an amendment to the said plaint seeking to introduce an alternative relief which is prayed for in terms following:

"Alternatively it be declared that the road being one set apart for the benefit and use by the residents of the villages round about, the plaintiff as a villager is entitled to make use of the road."

The learned Munsiff declined to grant this amendment on the view that the amendment, if granted, would render the suit one which ought to be brought only as representative action under Rule 8 of Order 1 of CPC. The correctness of this view is challenged here.

3. Sri Rama Bhat, learned Counsel for the petitioner-plaintiff, urged that the view of the Court below that the amendment would impart to the suit a character which would render it one which ought to be brought in a representative capacity

is erroneous: and the suit for the enforcement of the individual right of the plaintiff is perfectly maintainable notwithstanding the fact that similar rights may be vested in or are exercisable by others. He contended that the circumstance that a large number of others also possess similar rights could not make an action by an individual one which ought to be brought only in a representative capacity.

4. In my opinion, there is considerable force in the contention urged for the petitioner. It is well settled that the provision of Or. 1. R. 8 of the CPC is a purely enabling provision and the rule embodied therein is one of convenience. It entitles, under certain circumstances, only some of the interested persons to bring a suit on behalf of all, but it does not force one to represent many if his action is maintainable without the joinder of those persons. Order 1 Rule 8 CPC applies only to cases in which many persons are jointly interested in obtaining relief, and not to cases in which an individual right has been violated.

5. To bring a case within the provisions of Order 1 Rule 3 CPC all the members of a class should have a common interest in a common subject-matter and a common grievance and the relief sought should, in its nature, be beneficial to all. As observed in *Lingam Ramaseshayya v. Myneni Ramayya*, AIR. 1957 AP. 964. Order 1 Rule 8 is an enabling provision and does not compel any one to represent many if, by himself, he has a right of suit. The rule does not vest a right of suit in a person and if he, by himself, has no right to sue, he cannot proceed to sue on behalf of others by invoking the aid of Order 1 Rule 8. At the same time, the rule does not debar a person from maintaining a suit in his own right in respect of a wrong done to him though the act complained of may also be injurious to others. Rule 8 of Order 1 has been framed in order to save time and expense to ensure a single comprehensive trial of questions in which a large body of persons is interested and to avoid harassment to parties by a multiplicity of suits. In *Durga Dass v. Lt.Col. Bernards Dev*, AIR. 1972 J & K. 6. the right of the plaintiff to seek the relief of permanent injunction restraining the defendant from encroaching upon the public road lying between the plots of the parties and interfering with his right of passage was held not to be a representative suit so as to attract the provisions of Order 1 Rule 8. The decision in *Lingam Ramaseshayya*, AIR. 1957 AP. 964. referred to above was relied on.

6. In *S.K. Murugesu Mudaly v. Baruda Arunagiri Mudaly*, AIR. 1951 Mad. 498. Raghava Rao J., referring to the scope of Order 1 Rule 8, is a similar context observed:

"(4) It is urged for the plaintiff in this appeal that he sustained a special damage by the action of the defendants because in his capacity as agriculturist the amenities that he had all along enjoyed over the street for carrying his manure, fuel, hay etc, to his fields stood hampered by such action. It is said that the damage is nonetheless special, because other persons who also pursue the calling of agriculture may suffer the same inconvenience as the plaintiff as the result of the defendants' action. I accept this contention as well-founded and

hold that although not instituted with the leave of the Court under Order 1, Rule 8, CPC, or with the consent of the Advocate-General under Section 91, CPC, the present suit is maintainable.

(6).....After all, the provision of O. 1, R. 8, is only an enabling provision, and there is no reason why merely because the plaintiff happens to share the same inconvenience by the obstruction to the highway as other people do he should be debarred of his right to seek relief, when once in view of the Privy Council decision in *Manzur Hasan v. Mahammad Zaman*, 47 All. 151: (A.I.R. (12) 1925 P.C. 36) it is realised that the distinction between indictment and action in regard to what is done on a highway which is a distinction peculiar to English law ought not to be applied to India. I am of opinion therefore that even if the damage suffered by the plaintiff in the present case is one which is shared by other residents of the same locality, he is still entitled to maintain the present suit..."

7. The question we are concerned with in this petition is whether the amendment sought by the plaintiff-petitioner is such as to convert the suit into one, which must needs be in a representative capacity. In my opinion it is clearly not. As this is the only ground on which the trial Court persuaded itself to decline the amendments, it requires to be held that the amendments sought for in the present case should be granted.

8. Sri Sabarad, learned Counsel for the respondents, stated that the effect of the amendment is such as to render the suit one which would attract the provisions of S. 93. I am unable to appreciate how this contention is apposite in the context of the facts of the present case in which plaintiff seeks redress of an alleged individual wrong.

9. In the result, this civil revision petition is allowed; the order dated 4.10.1976 on I.A. VII is set aside and the said application I.A. VII allowed. In the circumstances of the case, parties will bear their own costs in this petition.