

(2009) 03 MAD CK 0104

In the Madras High Court

Case No : C.R.P. (PD) No. 109 of 2009 and M.P. No. 1 of 2009

N. Velusamy, N.P. Muthusamy Ramasamy (Died) and
Mahalingam

APPELLANT

Vs

N.P. Rasappan and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

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

Citation : (2009) 03 MAD CK 0104

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; No appearance, for the Respondent

Judgement

G. Rajasuria, J.—Inveighing the order dated 10.09.2008, passed by the District Munsif Court, Dharapuram, in I.A. No. 726 of 2008 in O.S. No. 37 of 2007, this civil revision petition is focussed.

2. Both sides called absent.

3. An epitome and summation of the relevant facts which are absolutely necessary and germane for the disposal of this revision petition would run thus:

The first respondent/plaintiff herein filed the suit O.S.No.37 of 2007 seeking the following reliefs as against the State of Tamil Nadu and public officials, namely R2 and R3 herein:

- a) to declare that the plaintiff is the absolute owner of the suit property;
- b) to pass a decree for permanent injunction restraining the defendants, his men, agents etc., from interfering with plaintiffs peaceful possession and enjoyment of suit properties;
- c) to direct the defendants and their subordinates to carry out the necessary changes by including the entire suit property within the patta of the plaintiff;

- d) directing the defendants to pay the cost of the suit;
- e) granting such further and other reliefs as may be just and proper in the circumstances of the case.

While so, I.A. No. 992 of 2007 was filed by R4 and R5 herein under Order 1 Rule 8 of CPC for getting themselves impleaded as though they are the representatives of the Velampoondi Village wherein the suit property is situated and also on the ground that the suit property is under the enjoyment of the villagers and it cannot be declared as the exclusive property of the plaintiff. The lower Court allowed that application, whereas, the present revision petitioners 1 to 3 filed the I.A. No. 726 of 2008 seeking to get set aside the said order passed on 08.10.2007 in I.A. No. 992 of 2007 on the main ground that the respondents 4 and 5 who projected themselves allegedly as representatives of the village are not competent to represent the village people etc. However the lower Court after hearing both sides, dismissed the I.A. No. 726 of 2008. Being disconcerted and aggrieved by the order of the lower Court, this revision has been focussed on various grounds, the gist and kernel of them would run thus:

The lower Court simply carried away by the fact that I.A. No. 992 of 2007 was returned for five times for correcting the defects and that there was no genuineness in the petition. Accordingly it was dismissed without considering the fact that I.A. No. 992 of 2007 filed under Order 1 Rule 8 of CPC at the instance of R4 and R5, was not at all a genuine petition.

4. A bare poring over and perusal of the relevant typed set of papers including the copy of the order of the lower Court would display and demonstrate, convey and portray the facts to the effect that the first respondent/plaintiff herein filed the suit as against Tamil Nadu Government and one other official for getting declared his right over the property described in the schedule of the plaint and primarily that is a dispute between the individual plaintiff and the Government. The Government is there to safeguard the interest of the public. In all Government cases, if general public are allowed to be impleaded as though public are also interested, then there would be no end to litigation and the case would not be wieldy also to handle.

5. However, much water has flown under the bridge and the lower Court in I.A. No. 992 of 2007, allowed the villagers to represent as they have come forward with a plea as though the village people are interested in the suit property which is allegedly under their enjoyment.

6. A plain reading of the plaint would reveal and exemplify that the plaintiff contended that the suit property as described by the Government officials as "Natham common land" is untenable. The suit as such before the Court is one contemplated under law in view of the Full Bench decision of this Court reported in Srinivasan and six others Vs. Sri Madhyarjuneswaraswami and five others, . However, I am of the considered opinion that the litigation could have been allowed to proceed between the plaintiff and the original defendants 1 and 2,

namely R2 and R3 herein alone. But the lower Court in its wisdom thought fit that the villagers also could be allowed to have their say in the matter and allowed the I.A. No. 992 of 2007. Neither the plaintiff nor the officials, viz., the original defendants 1 and 2 had not chosen to file any revision. However, belatedly as correctly observed by the lower Court, the revision petitioner filed I.A. No. 726 of 2008 so as to get set aside the order passed in I.A. No. 992 of 2007. In my considered opinion, there is nothing to indicate as to why they were not diligent enough in getting themselves impleaded in the I.A. No. 992 of 2007. But in the affidavit they would narrate and portray as though they were waiting before the Court etc., but the case was not called. Had there been sincere effort on the part of the revision petitioners they could have with the help of their Advocate, much earlier filed their impleading petition or objection in the office itself, but they have not chosen to do so.

7. When all is said and done, the proetcontra I am of the view that since the petitioners are claiming that they are very much interested in the welfare of the public and that respondents 4 and 5 are not allegedly having the capacity to represent the villagers, in order to shorten the procedure and save time, the revision petitioners 1 and 3 also could be given the opportunity of getting themselves impleaded as defendants 5 and 6 in the suit and see that their interest also is safeguarded and in the course of proceedings if they come across that respondents 4 and 5 (D3 and D4) are working against the interest of the villagers, it is for them to enlighten the Court. Hence, in this view of the matter, this revision is allowed only to the following effect:

(1) The order passed in I.A. No. 992 of 2007 shall remain in tact.

2) The order passed in I.A. No. 726 of 2008 dated 08.10.2007 is set aside directing the lower Court to allow the petitioners to get themselves impleaded as defendants 5 and 6 and file their written statement also, on receipt of a copy of this order, within ten days therefrom, the petitioners shall file an application to formally implead them as defendants.

8. I am fully aware of the fact that under the guise of representing the villagers, Tom, Dick and Harry might venture to get themselves impleaded and thereby elongate the cause list and also protract the proceedings. However, in this case, the revision petitioners are persistently showing their interest in expressing their contention in the suit, wherefore I would like to permit them to get themselves impleaded as defendants and there shall not be any more addition of parties in this case.

9. I would like to make it clear that in view of the prolonged pendency of the suit, the lower court shall do well to see that within a period of six months the suit is disposed of. This civil revision petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.