

(2006) 11 MAD CK 0067

In the Madras High Court

Case No : CRP (PD) No. 1590 of 2006 and M.P. No. 1 of 2006

S.A. Mohammed Sheriff, Dr. S.M. Abdul Kader and
Maschmeijer Aromatics Pvt. Ltd.

APPELLANT

Vs

C.D. Meyyappan

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 9

Citation : (2006) 11 MAD CK 0067

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : Habibullah basha for E.S. Govindan, for the Appellant; S.V. Jayaraman, S.C. for S. Chakravarthy, for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—The revision petitioners are the defendants. The respondent/plaintiff filed the suit for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit A and B Schedule properties or in any manner trespassing into the suit A and B Schedule properties. Pending the suit, the defendants filed I.A.No:2629 of 2006 contending that the suit has been filed by the plaintiff on behalf of co owners without following the mandatory provisions as provided under Order 1 Rule 8 of the CPC. According to the defendants the plaintiff has not obtained prior permission of the court before filing the suit as contemplated under Order 1 Rule 8 CPC. Hence the defendants prayed the court to frame the preliminary issue relating to non compliance of Order 1 Rule 8 CPC.

2. The respondent/plaintiff resisted the said Interlocutory Application contending that the suit property originally owned by his father C.T. Devaraj. He purchased the A Schedule property on 2.2.1959 and B Schedule property on 13.11.1961 by virtue of two registered sale deeds for valuable consideration. Patta was also issued and he was in peaceful possession and enjoyment till his demise. After his

demise his mother Ganga Bai, the plaintiff and his brothers and sisters inherited the properties and he alone was maintaining the suit properties. Joint patta was also issued. Being a co owner the plaintiff is maintaining and administering the entire joint family properties. Since the defendants tried to trespass into the suit properties, the plaintiff filed the suit against the defendants/third parties for bare injunction. The other co-owners are not in a position to maintain the suit properties directly. The interest of the plaintiff and the other co owners is common. There is no dispute between the plaintiff and the other co owners. The suit has been filed in the common interest to protect the suit properties. Hence there is no need to obtain prior permission to file the present suit.

3. The learned District Munsif, Alandur on a consideration of the averments and on hearing the counsel appeared on either side, dismissed the I.A., filed by the defendants. Hence the present revision.

4. Learned Senior Counsel for the revision petitioners contended that as per Order 1 Rule 8 CPC, it is mandatory to obtain leave of the Court to file the suit in a representative capacity when there are numerous persons having the same interest in the same suit. The learned Judge on a misconception held that the suit comes under Order 1 Rule 9 CPC and not under Order 1 Rule 8 CPC.

5. Per contra, the learned Counsel for the respondents contended that when the plaintiff does not deny the rights of the other co-owners, the suit filed by one of the co-owner is maintainable under Order 1 Rule 9 CPC.

6. The point for consideration is whether the plaintiff should obtain prior permission of the Court under Order 1 Rule 8 CPC? As far as the plaintiff is concerned, according to him, his father purchased the suit properties and after his demise his mother, himself and his brothers and sisters as co-owners are in enjoyment of the same. He is maintaining and administering the suit properties on his behalf and on behalf of the other members of the family. He has not denied the rights of the other co owners. On the other hand, admits in the plaint that they have got common right, interest in the suit properties.

7. in Nachal and Another Vs. C. Arjunan and Another, , M. Srinivasan, J., as he then was, in a case of similar nature held as follows:

4. The view expressed by the appellate court is not correct in view of the fact that the plaintiffs have admitted the rights of the other co owners in the suit properties. Insofar as the defendant is concerned according to the case of the plaintiffs, they are trespassers and they have no rights in the properties. In such a situation, any one co owners can file a suit as against the alleged trespassers and claim reliefs. This proposition has been laid down by a division Bench of this Court in P. Thimmayya Vs. P. Siddappa, . In this cases, there is no necessity for impleading the co owenrs as parties to the suit, as their rights are not denied by the plaintiffs. It is only a dispute between the defendants, who are alleged to be trespassed and the plaintiffs, who are alleged to be in possession of the properties. The trial court has found possession o the plaintiffs and negatived the

claim of the defendants. It is the duty of the appellate court to go into the question as to whether the plaintiffs are in possession and whether the defendants are entitled to any right in the suit properties. Hence the order of remand passed by the appellate court is unsustainable and it is hereby set aside.

8. In another decision of this Court in *Parvathi Ammal v. Kuppaswamy* 1999 MLJ (3) 633, this Court held that one co owner can sue for possession on behalf of another co owner against the trespasser.

9. On the other hand, the catena of decisions relied upon by the learned Senior Counsel for the petitioners reported in (1) *Kalyan Singh Vs. Smt. Chhoti and Others*, ; (2) *The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy*, ; (3) *The Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem and Others Vs. Nattainai K.S. Ellappa Mudaliar and Others*, ; (4) (2004) (I) MLJ 617; (5) *Kodia Goundar and Another Vs. Velandi Goundar and Others*, ; (6) 1998 (II) MLJ 343; (7) *T.R. Subramania Naidu Vs. Dr. Ambedkar People Liberation Front*, ; (8) *Lakhana Nayak and Another Vs. Basudev Swamy and Others*, ; (9) 1998 (III) MLJ 675; and (10) *Kaliammal Vs. Karuppan and 2 others*, are all cases in which the plaint has been presented in a representative capacity on behalf of a community or an association. In a case where the plaintiff wants to represent a community certain formalities have to be followed, like benefit of others and publication that they are exposing the cause of others whom he wants to represent. None of the citations relied upon by the learned Counsel for the revision petitioners dealt with a case in which the suit is filed by one of the co owners against trespassers. As rightly argued by the learned counsel for the respondent, the plaintiff does not dispute the shares or rights of the co owners.

10. Order 1 Rule 9 of the CPC reads as follows:

9. Misjoinder and non-joinder:- no suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

11. The object of Order 1 Rule 8 is only to prevent multiplicity of litigations. Because when persons seek to represent a particular community or association, the right and interest of others have to be taken into account and that is why publication is ordered and permission is also sought for to represent others. In such cases, there is a chance for multiplicity of litigation by persons who want to sue others, instead of the persons who seek to represent others. In a case of this nature, where the co owners are family members, and when there is no dispute among themselves as to their equal shares, there is no necessity to file a petition to get permission to obtain leave of the court to file the suit in a representative capacity and the present suit squarely falls under Order 1 Rule 9 CPC as has been rightly held by the learned District Munsif. Therefore, the suit does not suffer for misjoinder or nonjoinder of necessary parties.

12. In the result, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.