

(1920) 09 MAD CK 0019
In the Madras High Court

Sivathal Periyava Nadar and Others	APPELLANT
Vs	
Nana, Chuna Velmuruga Nadar and Others	RESPONDENT

Date of Decision : 21-09-1920

Acts Referred:

Citation : AIR 1921 Mad 682 : 64 Ind. Cas. 618

Hon'ble Judges : Napier, J;Krishnan, J

Bench : Division Bench

Judgement

Napier, J.—This is a suit brought by six persons, members of the Nadar community of the village of Palayampatti, against six other

members, alleging that they have violated the caste rules governing the treatment of caste temple and by their action have interfered with the

ordinary practice in connection with the temple and the plaintiffs' right. In their suit they allege that there are 200 persons, who were not included in

the plaint, who are interested and concerned in the plaint mentioned temple and they ask under Order I, Rule 8, to sue in a representative

character. Permission was given and notices were issued, and it appears that a certain number of persons applied to be joined as plaintiffs and

others as defendants. The suit went to trial and issues were framed as follows: Issue (2) whether the suit is not cognisable in civil Courts, (3)

whether the suit is not properly brought in a representative character, and (4) whether the suit as framed is not maintainable; and there were other

issues. The Munsif held that the suit could not properly be brought in a representative character and also that it could not be brought by the

plaintiffs personally, and that view has been upheld by the District Judge.

2. The appeal has now been argued before us on these two preliminary points. I

am of opinion that the view taken by the lower Appellate Court is incorrect.

3. It is suggested that Order I, Rule 8, will not cover the case of a person who is a member of a caste and is suing in respect of caste property. Mr.

A. Krishnaswami Aiyar put it that caste property is property owned by a body of a quasi corporate nature and that, therefore, there cannot be

numerous persons having the same interest in one suit because the quasi corporation is the only person that exists and that, therefore, there are not

numerous persons. The next point he took was that the plaintiffs having admitted in their plaint that the rights of the caste as a body were to be

ascertained by a meeting and decision of the majority, they could not bring a suit unless they had alleged at first that the majority had decided in

favour of their view.

4. Now taking the first objection, it is perfectly true of course that a caste is of a quasi corporate nature and also that a caste can hold property as

a person, but we are not dealing here with any question of substantive rights whatsoever. We are only dealing with procedure as affecting persons

who desire to bring suits, and there cannot be any doubt that although a caste is of a quasi corporate nature, it is formed of a number of persons

who have rights certainly in the caste property and equally certainly in the various matters which are under the control of the caste, and I do not see

why we should restrict the words "numerous persons" in the manner suggested because of the fact of their quasi corporate nature. Farther than that,

there have undoubtedly been cases where Order I, Rule 8, has been applied to persons belonging to a caste seeking to enforce their rights. The

very case relied on by Mr. A. Krishnaswami Aiyar as showing that caste property is property owned by the caste as a quasi corporate body

indicates that such a procedure is allowed, that is, *Suppan Acharry v. Vannia Konar* 24 Ind. Cas. 467. There the judgment shows that the suit was

brought by certain plaintiffs named on behalf of themselves, their caste, the Karnams and the Villais; and in that suit they sought to have declared

that they had acquired a customary right to the user of a certain path. In the judgment in that case the Bench uses the following language:--

Suits have been brought on behalf of caste, and against caste. All the members of the caste cannot be parties to such suits. Certain persons were

allowed, therefore, to represent them u/s 30 of the Civil Procedure Code.

5. The learned Vakil for the respondents pressed on us that there is no actual decision that where caste is concerned all the members have the

same rights as persons who are not members of a quasi corporate character. That is true, but I am bound to say that where I find language such as

where there are numerous persons having the same interest"" and where it is obvious that some provision must be made for the bringing or

continuing of a suit in the interest of a quasi corporate body, this is the only method by which such body can be represented. Mr. A. Krishnaswami

Aiyar's argument, pushed to its logical conclusion, would result in this--that it would be impossible for any caste question to be brought before the

Courts in such a manner as to bind the caste.

6. As to the second point, it is true that in this case the plaintiffs in paragraph 6 of their plaint alleged that ""all the affairs mentioned in paragraph 5

are being conducted in accordance with the decisions of the majority of the Thalaikattus."" But I fail to see why that should act as a bar to the filing

of the suit. Undoubtedly it may be pleaded as a defence to the suit and it may be that the plaintiffs, if they are unable to prove that they have got the

support of the majority of the Thalaikattus, cannot succeed in getting the relief which they seek. But apart from the decision which is relied on, I

can see no reason why we should introduce this condition precedent to the filing of the suit, when it is not to be found in any section or Order or

rule of the Code. The case relied on is a decision of a Bench in the case of Harkisondas v. Chhaganlal 33 Ind. Cas. 264 .. The Court held that

plaintiffs, who were members of the Dasa Lad Bania caste, could not bring a suit, for ""they could not represent or sue on behalf of those numerous

members of the Hajumpeer section who admittedly were in diametrical opposition to them in the present controversy."" The reason given by the

learned Judges was that "" in no sense could it be said, as the language of the rule requires, that they (that is, the opposite party) and the plaintiffs

held the same interest in the suit and that the plaintiffs in bringing this suit were suing for or on behalf of these dissentient members."" If this reading of

Rule 8 is to be adapted, it seems to me that this provision can never be applied where any question arises with regard to which there is a variance

among the members of community which some of these members desire to have

settled by Court. Where there are large communities, it is obvious that there must undoubtedly be differences of opinion; and if no suit can be brought by any member of a caste under Order I, Rule 8, unless they represent the views of every member of the community or of a majority whose views bind the whole, this rule is inapplicable to any suit brought to decide questions in issue between the members, and can only be availed of for the purpose of bringing suits on behalf of a community against a third party. I can only say that I have never beard this proposition put forward before us, as a ground of objection to suits which have been filed to ascertain the rights of members of the community inter se. The words are, "where there are numerous persons having the same interest in one suit one or more of such persons may, with the permission of the Court, sue...on behalf of all persons...so interested." They are not "the same interest in the subject-matter of the suit," and I have always understood this rule to be applicable to cases where one person seeks to represent a number of other persons who agree with him in the contention which he has raised in the suit as to the rights of the various members of the community.

7. It seems to me that the sole object of this section is to provide a simple means by which as many persons as possible, who are members of the same community or are equally interested in certain affairs, can be brought together and a judgment can be given which will bind them all.

8. For these reasons I think that the judgments of both the lower Courts are wrong. the judgment of the lower Appellate Court on the preliminary point must be set aside and the suit remanded to the first Court for disposal on the other issues. Costs to abide the result. The Court fee paid on the second appeal memorandum will be refunded to the appellants.

Krishnan, J.

9. My learned brother has so fully dealt with the case that it is not necessary for me to go, at any length, into the points of law raised before us in this second appeal. I agree with him that the lower Courts are wrong in the view that they have taken on the two points of law which have been raised. Those points are, firstly, the applicability of Order I, Rule 8, Civil Procedure Code, to this case, and, secondly, whether the plaintiffs are entitled to bring a suit in the manner that they have done without having a meeting of the caste convened and getting a resolution passed therein

authorising them to sue. Taking the first point, I think that there can be no manner of doubt that Order I, Rule 8, covers a case of this sort, where

numerous persons who are members of a caste in a village are interested in the suit. If the rule is not to be applied, it will be almost impossible to

bring a suit of this character, as the numerous persons who are interested will have to be made parties individually.

10. It was argued by respondents' Vakil that Order I, Rule 8, cannot be applied to a case, like the present regarding property owned by a quasi

corporate body like a caste, for he contends, there is one legal person only, viz., the caste, and that it is wrong to consider it as a case of numerous

parties being interested in the suit. Now in one sense, no doubt, the property belongs to the legal unit, the caste, which is a quasi corporate body,

but nevertheless as the caste itself consists of numerous persons and as the right is really vested in that body of numerous persons. I can see no

difficulty in applying Order I, Rule 8, to such a case. In fact we have a good example of such cases in the case of Malabar Tarwads, which often

consist of very numerous persons and which own property in their corporate character as Tarwads and yet Rule 8, which we are considering, and

the corresponding Section 30 of the old Code of Civil Procedure, have been applied to cases where the members of Tarwads who are jointly

interested in bringing a suit are numerous. No objection has ever been raised to such a procedure. Furthermore, in this case the suit is not by the

caste as a whole against an outsider for enforcing its rights to its property, but is one between the members of the caste themselves, as the plaintiffs

claim that the removal of the idol from its usual place to the new erection that has been put up is an infringement of their individual rights as

members of their caste by the other members of the caste who removed the idol. They are really putting forward a right which they have in

common with the other members of the caste, and not merely a right of the body corporate. For the above reasons also I think Rule 8 does apply

to this case. Suppan Achary v. Vannia Konar 24 Ind. Cas. 467 cited by my learned brother is an authority for this view, which is also in

accordance with English practice.

11. Now permission having been granted by the Court under the rule to the plaintiffs to sue in a representative capacity on behalf of all the

members of the caste, it cannot be contended that the suit is on the face of it not maintainable. Whatever defence the defendants have will have to

be considered and disposed of in the trial of the case, but the suit should not have been dismissed in limine.

12. The second question raised was that without holding a caste meeting and without obtaining from it a resolution authorising the bringing of this

suit, the suit was not properly brought and should be dismissed. I know of no provision of law which requires that the plaintiffs should have held a

meeting as a prerequisite to their suit and none has been pointed out. The learned Vakil for the respondents has, however, brought to our notice in

support of his contention the case of Harkisondas v. Chhaganlal 33 Ind. Cas. 264. That case appears to support him, but, with all respect to the

learned Judges, I regret I am unable to follow it. The learned Judges have not cited any authority in support of their decision. I can see nothing in

Order I, Rule 8, Civil Procedure Code, that requires the person seeking permission to sue in a representative capacity to obtain formally

beforehand the authority of those whom he is seeking to represent. Under the rule it is the permission of the Court and not the authority of those

represented that entitles him to represent them. This is clearer in the case where a caste or community is sued as defendant and the plaintiff seeks

that it should be represented by one or more individuals. To such a case plaintiff cannot be expected to get the caste to hold a meeting and choose

its representatives before he launches his suit.

13. The rule provides for notice to be given to all parties and if anyone wishes that he should not be represented by the plaintiffs, he can appear

and object and may be made a defendant, if necessary. To insist on prior authorisation is both impracticable and uncalled for by the rule. There is

nothing in the general law which requires the plaintiffs to call a meeting of the caste before bringing their suit : for their cause of action is complete

on the infringement. Whether it is justifiable as the action of the majority of the caste, that is a matter for decision in the trial.

14. I agree with my learned brother that the decrees of the lower Courts must be set aside and the case remanded to the first Court for disposal

according to law.