
(1927) 11 MAD CK 0061
In the Madras High Court

Sonachalam Pillai (dead) and Others APPELLANT
Vs
Kumaravelu Chettiar and Others RESPONDENT

Date of Decision : 16-11-1927

Acts Referred:

Citation : (1928) 27 LW 69 : (1928) 54 MLJ 587

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The question whether Explanation VI to Section 11 of the CPC is controlled by Order 1, Rule 8, referred to by us to the Full Bench has been answered in the negative and the question of fact whether O.S. No. 14 of 1877 was filed and allowed to proceed in a representative capacity is left for our decision. Mr. Justice Ramesam who delivered the leading judgment of the Full Bench observes at the close of his judgment.--

It is still open to the learned Judges to find whether the Subordinate Judge who tried the former suit with reference to the issues, findings etc., meant to allow the suit to proceed in a representative capacity for the benefit of the Vaniyars. As I think there is no express finding and as it is a question of fact, we have nothing to do with the matter. I only observe that it is open to them to so find, if they choose to do so with reference to the pleadings, the issues, judgment and decree.

In our reference we state:

From the pleadings, from the issue, from the way in which evidence was adduced and the number of witnesses examined and the contentions of the parties appearing in the judgment we have no hesitation in holding that the suit was brought to assert not merely the title of the plaintiffs but also the right of the Vaniyars to enter the Mahamantapam of the temple and the relief asked for was not one personal to the plaintiffs but one which was common to them as well as to all the Vaniyars.

We gave our reason for finding that the former suit was instituted in a

representative capacity, and the Judge tried the suit as such and gave his decision thereon. We made the following observation with regard to the contentions of the learned Advocate-General for the appellant that an application u/s 30 must have been presented by the plaintiffs and an order must have been passed and if the order was not forthcoming the court should presume that such an order was passed at least on an oral application and that as all the records have been destroyed under the rules for the destruction of records, every presumption should be made in favour of the regular procedure having been followed.

We are satisfied that no permission was applied for orally or in writing and that no permission was granted expressly or impliedly u/s 30 corresponding to Order 1, Rule 8, Civil Procedure Code, to the plaintiffs to sue on behalf of or for the benefit of all the Vaniyars interested along with the plaintiffs to worship in the Tiruchendur Temple as alleged by the plaintiffs.

This observation of ours has evidently given rise to the impression that we did not find as a matter of fact that the suit was brought in a representative capacity. The case as to the representative character of the proceedings was re-argued before us and we are of opinion that the judgment and decree in O.S. No. 14 of 1877 bar the present suit. The plaintiffs sued for themselves and the other members of the Vaniyar community and the suit was defended by the temple authorities on the ground that the whole Vaniyar community had no right of entry as claimed and that the Judge tried and decided the suit as if it was a representative suit. The Subordinate Judge states in paragraph 8 of his judgment:

It must be conceded by plaintiffs that if the plaint Ex. XI in the previous case stood alone, the reliefs asked for in that suit should be deemed to be practically the same as that sought for in this suit.

He gives a correct translation of paragraph 5 of Ex. II and proceeds:

That prayer will certainly include the present case as the plaintiffs herein are members of the Vaniyar cast and the fact that there was an additional prayer then for the grant of Rs. 52,000 as damages to the plaintiffs therein will not in my opinion alter matters.

We are unable to agree with his view that the Judge at the trial narrowed the issues which followed the pleadings and were general and affected the whole community to issues which were purely personal to the plaintiffs. The statement in the opening passage of the judgment as to plaintiffs and their family is evidently a slip or misprint for community. As regards the statement in paragraph 6 of the judgment it has no bearing on the issues or the form of the suit. What was attempted was to allege that the allegation in plaint did not go far enough and that the Vaniyar community were not Sudras but of a higher caste, namely, Vysias. There is nothing in this to limit the scope of the suit. On the contrary the judgment proceeds to decide the general right claimed of all the Vysias including plaintiffs to enter the portion of the temple to which they were

denied access. The issues were not amended, but remained as they were, referring to the general right of all Vaniyars. There is no doubt that this suit was conducted and defended bona fide and it is not suggested before us that there was any collusion or any neglect by the plaintiffs to adduce evidence in support of the general claim made.

2. It is strongly urged by Mr. Ramachandra Ayyar that no suit should be considered as having been brought in a representative capacity unless the cause-title makes it plain. In other words, unless the cause-title shows that the suit is brought in a representative capacity, the suit cannot be treated as one brought in a representative capacity. If this argument is correct, then all the cases of the Madras High Court in which such a description was not given in the cause-title and which, notwithstanding the absence of such description,, were decided to have been brought in a representative capacity were all wrongly decided. There is no warrant either in law or in the rules of procedure for such a contention. He relies upon the case of *London Association for Protection of Trade v. Greenlands, Limited* L.R. (1916) 2 A.C. 15 as supporting his contention and refers to an observation of Lord Atkinson at p. 30. In that case, a firm of merchants who were said to have been defamed by some persons brought a suit against an unincorporated body of persons for damages and the question was whether the whole body of a loose association which was not incorporated could be made liable for the act of any of its members. In discussing the liability of the whole body of the association Lord Atkinson observed:

The main and real tort sued for was the publication on or about April 2, 1910, to one Shand Kydd of a libel contained in a letter addressed to him in the words set out in the third paragraph of the statement of claim. The defendants other than Wilmshurst filed a joint defence. The plaintiffs did not proceed under Order XVI, Rule 9, to sue one or more of the members of the association on behalf of themselves and their brother members. They sued the association in the trade name, the London Association for the protection of Trade, as if it were a legal entity. The very object of this Rule 9 was to facilitate the bringing of actions against unincorporated aggregates of persons. But in order to take advantage of it the fact that the plaintiff or the defendant sues or is used on behalf of himself and others must be stated in the title to the action.

This observation of Lord Atkinson cannot apply to the present case. That was an action in tort and it cannot be said that the liability of the person who published the libel was the same as the liability of the other members of the unincorporated body of persons who had had nothing to do with the publication of the libel. Whatever may be the rule of pleading in England, in India the substance of the pleading and not the form should be considered". In England, pleading is an art and the principles which apply to English pleadings should not be applied wholesale to pleadings in India without due regard to the circumstances and conditions prevailing here. As observed by Macleod, C.J., in *Dharamdas Kaushalyadas v. Ranchhodji Dayabhai* ILR (1921) Bom. 200

It is not the duty of this Court to read pleadings in the District Courts as strictly as they would be read if they were filed in the Chancery Division of the Supreme Court. We have a much larger range of vision, and the plaintiffs' case cannot be defeated merely on the ground of some technical defect in their pleadings, provided on the real issues in the case they succeed.

As I have said above, the substance of the plaintiff's pleadings should be considered and not the mere form. In this connection we may refer to the decision of the Calcutta High Court in *Bidhu Sekhar Banerjee v. Kuladaprasad Deghovia* ILR (1919) Cal. 877. That was a case in which a Shebait was sued by name and the question was whether he was sued in his representative capacity. Fletcher, J., observes after referring to Order 7, Rule 9, Sub-rule 2:

The decisions of this Court are quite clear on this point. It is not necessary to state in the cause-title of the plaint the representative capacity in which the plaintiff or the defendant sues or is sued, although no doubt that is a convenient place to make such a statement. In support of that, I may refer to the decision in *Kuarmani Singha Mandhata v. Wasif Ali Murza* (1915) 19 C.W.N. 1193 and also to the decision in *Dinabhandu Nande v. Chamiraddi Miji* 34 IND.CAS. 548.

The question whether a suit is brought in a representative capacity or not would only arise when the cause-title does not describe the suit as being brought in a representative capacity,. In order to decide the question, we have to see whether the plaintiffs did in substance bring the suit in a representative character or capacity and whether the defendants contested the suit on the larger question affecting the plaintiffs on record as well as others whom they represented, or confined their contest to the plaintiffs' right alone, and whether the Court understood the plaint and other pleadings as covering or as raising the larger issue regarding the right of the plaintiffs as well as other persons having the same interest as the plaintiffs and whether the Court allowed the suit to proceed as being a representative suit and whether the Court confined its decision only to the plaintiffs' right or whether its decision covered the interest not only of the plaintiffs but also of all persons whom they represented. The materials for the consideration of this question in this case are the plaint and the judgment. The former suit being a suit of 1877, almost all the records connected with it both in the Court of first instance and in the High Court were destroyed under the rules for the destruction of record. But these two documents are sufficient for the purpose of enabling the Court to decide whether the plaintiffs brought the suit in a representative character or not. Ex. II is the plaint. The 1st and 2nd plaintiffs are father and son living in Venkataramapuram village. The 3rd plaintiff does not appear to be a relation but a caste man living in a different village and the 4th plaintiff is a caste man. The 2nd paragraph says

The plaintiffs and all the other Vaniars have, from time immemorial, been in the habit of worshipping the deity going as far as the wooden Ali (lattice) placed between Ardhamantapam and Mahamantapam in the temple of Sree Subramania Swami at Tiruchendur. Even in the other temples situated in this Presidency the

plaintiffs and others of their caste are in the habit of worshipping the deity going as far as the middle portion situated between Ardhamantapam and Mahamantapam.

In paragraph 3 the plaintiffs state:

The defendants have been obstructing the entire community of Vaniars including the plaintiffs from crossing the outside compound and entering in.

Paragraph 4 is

On account of the aforesaid act and obstruction the plaintiffs and other Vaniars have been lowered in the estimation of the people of other castes of an equal status and are also very much aggrieved at their having to remain without worship in the said temple.

The first prayer as correctly translated by the Subordinate Judge is (1) For establishing the right of the Vaniyar caste including the plaintiffs and others to go as far as the wooden lattice placed between the Ardhamantapam and the Mahamantapam in the Subramania Swami temple at Tiruchendur and to worship the deity from there and to place their Kavadies in front of the Valliamman shrine included in the Prakaram of the said Subramania Swami. (2) For the issue of a permanent injunction to the defendants restraining them from causing obstruction to the plaintiffs and other members of the Vaniyar caste,. Unfortunately the written statement is not forthcoming. But the judgment gives a precis of the defendants' written statement. The defendants were the Dharmakarthas, Archakas and the temple servants. Paragraph 3 of the judgment is as follows:

Defendants 3, 4, 5, 7 and 9 urge that plaintiffs are " Vaniyars" (oil-mongers) and not " Vaniyars" (merchants), that they are people of low caste, and from immemorial usage the limit prescribed for their worship is the spot C in the plan A and that as they exceeded that limit, they were properly sent out of the temple, and that they have sustained no loss to entitle them to any kind of damages.

The issues are, whether oil-mongers, commonly known as "Vaniyars" are admitted into the plaint temple to worship at the spots A and B and, if so, (2) have plaintiffs suffered in mind and reputation from the defendants having prevented them to make their worship at the said spots and, if they have, to what amount of damages are they entitled? In the course of the suit the plaintiffs wanted to raise the question whether they are not Vaisyas, that is, one of the twice-born classes, and thereby to make their position unassailable, for, according to their contention, if some Sudras could go and worship by standing in the Mahamantapam, the Vaisyas who are said to belong to the third of the twice-born classes would, as a matter of course, be entitled to at least equal privileges with some of the Sudras. The Subordinate Judge refused to allow the plaintiffs to raise the question whether they are Vaisyas or not, for, as he

properly observed, the right to worship by standing at the Mahamantapam rested upon the usage and not upon the plaintiffs being Vaisyas or any other section of the Aryan race. The evidence adduced in the case was to show that the Vaniyars as a class were entitled to worship by going to the Mahamantapam. The summary of the evidence is given in paragraph 12 and from the evidence it is clear that the plaintiffs asserted their right not in their individual capacity as a right belonging to them, but they claimed the right for the whole class or caste of Vaniyars and strove to establish such right in the hope that if that was established they as Vaniyars would have the benefit of it,. The evidence of Gurukkal, P. W. 4, was that he had taken a number of Vaniyars on various occasions into the temple. It is clear therefore that the plaintiffs did not rest their case upon any right belonging to them exclusively but they contended for the right of the whole community. The defendants examined 11 witnesses and their evidence was that according to immemorial practice Vaniyars were not allowed to enter the spots A and B and that they made their worship at the spot C. The Subordinate Judge believed the evidence of the defendants as appears from paragraph 4 and disbelieved the evidence of the plaintiffs and decided the case against the latter. The plaintiffs carried an appeal to the High Court, and the High Court simply confirmed the decree of the Subordinate Judge with the observation:

We think the reasons assigned by the Judge who passed the decree dismissing the plaintiffs' suit are satisfactory to show that the plaintiffs have not made out the right they claimed.

Mr. Ramachandra Aiyar relies upon Ex. II-A, the decree, and urges that the decree does not make any reference to the right of the whole community,. The decree as drawn up simply says

the suit is dismissed and that the parties do bear their respective costs.

From the plaint and the judgment it is clear that the suit was brought by the plaintiffs in a representative capacity and the defendants understood the suit to be such and met the plaintiffs' claim. The first issue shows clearly what was in the mind of the plaintiffs, the defendants and the Judge who framed the issue. The evidence was adduced to show that the whole community has the right claimed in the plaint and the defendants in their evidence met the plaintiffs' case by proving that the class to which the plaintiffs belonged did not enjoy the right claimed and the Judge in allowing the plaintiffs and defendants to adduce such evidence and in considering and weighing the evidence, had before him the larger question whether the plaintiffs' community of Vaniyars had the right claimed or not. That being so, we have no hesitation in holding that the Subordinate Judge who tried the suit not only allowed the suit to proceed in a representative capacity but considered the case and decided it with regard to the question of the right of all the Vaniyars represented by the plaintiffs.

3. The result of this finding is that the present suit is barred by *res judicata* by reason of the decision in O.S. No. 14 of 1877 on the file of the Subordinate

Judge's Court of Tuticorin. The plaintiffs' suit therefore fails and the appeal is allowed and the suit is dismissed with costs throughout.