

(1924) 03 MAD CK 0104
In the Madras High Court

V. Krishna Aiyar

APPELLANT

Vs

Pachaiyappa Chetti and Others

RESPONDENT

Date of Decision : 19-03-1924

Acts Referred:

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

Citation : AIR 1924 Mad 883 : (1924) 47 MLJ 540

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The plaintiff instituted the suit for a declaration that the sale deed, dated the 16th September, 1919, executed by the Official Assignee of Rangoon in favour of the defendant is null and void. He described himself in the plaint as a creditor of T.A.R.A.R.M. Ramanathan Chetti who was adjudicated an insolvent and whose estate was represented by the Official Assignee above mentioned. This suit was filed on the 15th of January, 1920. Among other pleas, the defendant stated that he did not admit that the plaintiff was a creditor of the insolvent firm. Issues were framed on the 30th March, 1920, and the third issue runs thus:

Whether the plaintiff was one of the creditors of the insolvent Ramanathan Chetty, and, if so, whether he has no cause of action to maintain this suit ?

2. The trial was about to commence in January, 1923, and on the 24th of January, one Krishnier made an application to the Court for the purpose of being added as a plaintiff to the action. I may state that the plaintiff is a Nattukottai Chetti and was represented throughout by this Krishnier. The reason why he desired to be added as a party is set forth in para. 4 of his affidavit, dated 24th January, 1923. " The defendant has taken the objection that the plaintiff is not a creditor of the insolvent firm and has no locus standi to maintain the suit. In order to obviate any technical objection on that ground, it is necessary in the interests of justice that this Hon"ble Court should be pleased to join me as a plaintiff and I am willing to continue the suit from the stage which it has now,

reached. "

3. Mr. G. Krishnaswami Aiyar, the learned Vakil for the petitioner, has contended that the suit having been instituted under Order 1, Rule 8, Civil Procedure Code, was a representative suit filed in the interests of the creditors of the insolvent, that therefore Krishnier was throughout constructively a party to the proceedings, that the application in effect was to place Krishnier on the record eo-nominee as a party and that in making the application he was merely taking advantage of the provision contained in Clause 2 of Rule 8. If this argument is correct, in my opinion there will be very little difficulty in acceding to the request. But the question is, is Krishnier a party to the proceeding at all ? Is he a party although on the record his name does not appear ? The answer to this question will depend upon the construction of Order 1, Rule 8. The object of this provision is that in certain cases one person or a few persons should be allowed to represent all persons interested in a suit. The rule is in fact an exception to the general rule that all persons interested should be made parties to a suit. It pre-supposes the existence of a right in the plaintiff. It assumes that under the substantive law, the plaintiff has a right of suit and the rule enables him to represent the whole body of persons whom he seeks to represent. The rule says : " Where there are numerous persons having the same interest in one suit, one person may sue on behalf of all persons so interested. " The " one person" indicated in the rule is the person who has an interest common to himself and the body whom he professes to represent. The community of interest between him and the others of the class is the pre-requisite necessary to the end proposed. It is not any person that may sue on behalf of a class, but it is that person who has an interest which is the same as that possessed by the whole body of persons. " Given a common interest and a common grievance, a representative suit is in order if the relief sought is in its nature beneficial to all whom the plaintiff proposes to represent. " Judgment of Lord Macnaghten in *Bedford, Duke of v. Ellis* (1901) AC 1. If this condition is found wanting, if the plaintiff turns out not to be a member of the class on whose behalf he professed to institute the suit, I am of the opinion that the suit is wrongly constituted. The permission to sue is given by the Court on the assumption that the plaintiff is a member of the class and if the assumption is shown to be wrong the suit is not a representative suit and no member of the class is constructively a party to it. On the assumption, therefore, that the plaintiff in the present suit is not a creditor of the insolvent, Order I, Rule 8 has no application.

4. The following observations of Knight Bruce, L. J. in *Burt v. British Life Assurance Association* 4 De G&J 69 45 E R 62 are very relevant in this connection : " He has sued on behalf of himself and others, and notwithstanding what has been contended on the part of the defendants, I assume that there still exist persons who have a right to complain of these transactions. But that will not give the plaintiff a title to sue for them. As on one hand a plaintiff who has a right to complain of an act done to a numerous society of which he is a member is entitled effectually to sue on behalf of himself and all others similarly

interested though no other may wish to sue, so, although there are a hundred who wish to institute a suit and are entitled to sue, still if they sue by a plaintiff only, who has personally precluded himself from suing, that suit cannot proceed. The present case in my opinion stands upon the same footing as if the dissatisfied share-holders (supposing them to be dissatisfied) had sued by a plaintiff who had released the defendants. " Lord Justice Turner concurs and the law is stated in the same terms in Daniel's Chancery Practice, p. 179.

5. If the plaintiff is a creditor, the assumed necessity for this application does not exist and it equally fails.

6. It is next contended that Krishnier may be made a party under Order 1, Rule 10. I do not propose to discuss the applicability of this rule to cases falling within Order 1, Rule 8. It is sufficient to say that it must be alleged and proved, that the suit was instituted originally in the name of a wrong person through a bona fide mistake and that element is utterly wanting in the present case. No allegation is made that the mistake was bona fide. As a matter of fact, no materials absolutely none are placed before the Court from which an inference can be drawn in favour of the plaintiff. This application cannot therefore be allowed under Order 1, Rule 10. I may, in passing, mention that in the lower Court only this provision was relied on and that reference to Order 1, Rule 8 was made only in the course of the arguments before me. Civil Revision Petition No. 253 of 1923 therefore fails and is dismissed.

7. Another application was made on the same date, namely, 24th January, 1923, by the original plaintiff himself for permission to amend the plaint. Paragraph 5 of the plaint runs thus:

The plaintiff states that the Official Assignee of Rangoon has, through private negotiations conducted by the Official Receiver of Ramnad, conveyed the undermentioned properties for a grossly inadequate value of Rs. 12,000 and has executed a sale deed in favour of the defendant though several creditors of the insolvent including the plaintiff, protested against such a sale and offered much higher price.

8. He proposes to amend the plaint by saying that the defendant was a benamidar for the insolvents and that T. S. Ramaswami Aiyangar who conducted the sale as agent of the Official Assignee of Rangoon made a pretence of selling the property by public auction but really sold the property by private contract to the insolvents, the defendant being merely a benamidar for them. Thus allegations of fraud are proposed to be added. The law is stated thus in Annual Practice, page 451:--" Thus if either party seeks to amend his pleading, by introducing for the first time allegations of fraud, etc.. the Court will ask why this new case was not presented originally and may require to be satisfied as to the truth and substantiality of the proposed amendment. " The materials, if any, which substantiate the allegations of fraud have not been referred to in the affidavits. In the circumstances and having regard to the great delay in making

this application from which want of bona fides may be inferred I am not disposed to interfere with the order of the lower Court. C.R. P. No. 580 of 1923 accordingly fails and is dismissed.

9. Then there is a third application made by the plaintiff on the same date for adding the Official Assignee of Rangoon as a party-defendant. The defendant contends that the plaintiff's object in making this application is to delay the trial. As a matter of fact the learned vakil for the petitioner says that he wants no relief against the Official Assignee but that for enabling the Court to do complete justice between the parties his presence is necessary. He says, if the plaintiff obtains a decree setting aside the sale and if the Court directs the refund of the purchase money to the defendant, it may then become necessary to have the Official Assignee on the record. The answer is that if the plaintiff obtains the decree, it will be open to him to move the Insolvency Court for directions to the Official Assignee to pay the money. I do not think at this late stage this application ought to be granted. C.R. P. No. 579 of 1923 therefore fails and is dismissed.

10. The petitioner will pay the defendant's costs in all the C.R. Ps. (Three sets of costs).