

(1946) 07 MAD CK 0021
In the Madras High Court

V.H. Subramania Vadiar, Trustee of Vatakanthara
Thiruvengatappan Devaswam and the representative of the
said villagers

APPELLANT

Vs

Sreenivasa Vadiar, Secretary, Sree Krishna Bhajana Madom

RESPONDENT

Date of Decision : 10-07-1946

Acts Referred:

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

Citation : AIR 1947 Mad 100 : (1946) 59 LW 499 : (1946) 2 MLJ 221

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The two points raised in this second appeal are those set. out for determination in the lower appellate Court. They are these:

(1) Whether the Bhajana Madham in question is an institution appertaining to Thiruvengatappan Devaswom, of which the plaintiff is trustee;

(2) If not, whether the plaintiff is entitled to any of the reliefs claimed in the plaint as a representative of the villagers of Vadakanthara Village.

Both these points were decided against the appellant in the Courts below.

2. The first point is one of fact. The learned advocate for the appellant criticises the judgment of the lower appellate Court and points out that some

of the documents have not received sufficient consideration. He points out, for example, such a sentence as this:

Ex. P-1 to P-6, P-8 and P-11 relied on by the plaintiff do not in any way help the plaintiff's case.

He contends that this is a very improper way of dealing with these important documents. It is to be remembered, however, that the judgment of the

lower appellate Court was a concurring one. In view of the fact that the learned

District Munsiff discussed the whole case very thoroughly and examined every document carefully, it was unnecessary for the lower appellate Court to repeat the arguments of the District Munsiff. I find no reason for disturbing this concurrent finding of fact.

3. The second point is a combined question of fact and law. The question of fact is whether the plaintiff was a villager, and the second is, assuming that he was not, did the permission granted by the trial Court to the plaintiff to represent the villagers, prevent that Court and the appellate Courts from considering the question whether he was entitled to sue ? I find no reason for not accepting the concurrent finding of the Courts below that the appellant was not a villager. Both the Courts were also of the opinion on the evidence that only the villagers had a right to manage the Bhajana Madom.

4. It is argued that when a Court grants permission to a person to represent a body, that decision is binding on the parties and cannot be re-agitated at any other stage of the suit or appeal. It is easy enough to see how injurious it might be to an institution if a person not entitled to represent it, possibly even inimical to it, were to obtain an order in his favour--perhaps obtained *ex parte*--to represent that institution, and upon the Court's finding that he was not entitled to represent the institution, it could not dismiss the suit on that ground and was forced to pass a decree binding on the institution, when all the persons interested in the institution were content with the management and did not wish it to be interfered with. The learned advocate for the appellant, however, relies on the decision of the Bombay High Court in *Gafuralli Sayad Anwar Vs. Mohiddin Shamsuddin*, . There, certain Mahomedans were appointed under Order 1, Rule 8, to represent a mosque. A successor to the judge who granted the permission, after hearing the arguments for a large number of other persons interested in the mosque, who contended that the character of the plaintiff did not entitle him to present the community and that some other persons should be appointed, deleted the names of the original plaintiffs and substituted some others. It was held by the learned Judges of the Bombay High Court that this could not be done, that it was not open to a succeeding Subordinate Judge to nullify an order passed by his predecessor, and that Sub-rule (2) of that rule provided ample opportunity to the

others to get themselves impleaded as parties. Even that decision does not however say that it is not open to the appellate Court to hold that the trial Court ought not to have permitted the plaintiffs to file the suit. Moreover, the dispute there was between persons undoubtedly entitled to enjoy the institution as to who was the best qualified to represent it. No harm was done to anybody by allowing the plaintiffs to represent the institution; because the others equally interested in the institution could get themselves impleaded. A different situation arises when the- person who brings the suit is not entitled to represent the community at all. Venkatasubba Rao, J., in V. Krishna Aiyar Vs. Pachaiyappa Chetti and Others, , said:

Order 1, Rule 8, CPC presupposes the existence of a right of suit in the plaintiff who instituted the suit; and the community of interest between him and others of the class is the prerequisite necessary to enable him to represent that class. If the plaintiff turns out not to be a member of the class on whose behalf he professed to institute the suit, the suit is not a representative suit and no member of the class is constructively a party to it.

With respect, I am in entire agreement with the learned Judge.

5. It may be mentioned that the learned Munsiff did not attempt to decide in the application under Order 1, Rule 8, whether the plaintiff was a resident of the village and was entitled to sue on behalf of the community. What he said was this:

The permission to file a suit in a representative capacity is sought only to meet the contention that that this Bhajana Madom does not pertain to the Devaswom. So the objection based on Section 73 of the H.R.E. Act cannot stand. The permission prayed for is granted.

The question whether the plaintiff was a villager and therefore entitled to represent the Bhajana Madom, he made an issue in the suit and no objection was taken to the framing of such an issue by the plaintiff.

6. I cannot therefore agree with the learned advocate for the petitioner that the question could not be agitated in the trial Court. Even if it could not be agitated there, it could be done in appeal. It is not possible to believe that there is no remedy against a wrong order passed by a trial Court under Order 1, Rule 8.

7. The appeal fails, and is accordingly dismissed with costs.