

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/12/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

C.R.P.(P.D) No.1652 of 2003 and C.R.P.(P.D) 1737 of 2003

and

C.M.P.Nos.12173 and 12783 of 2003

1. Antony Devaraj
2. Maria Jochin .. Petitioners in both
the civil revision petitions

-Vs-

1. Aralvaimozhi (Kurusadi)
Devasahayam Mount Oor
and Thuya Viagula,
Annai Church, rep. by the Trustee.
2. S.George
3. The Kottar Diocese,
rep. by His Holiness
Bishop of Kottar,
Bishop's House, Nagercoil.
4. I.George
5. J.Maria Jesuadimai
6. S.Devasahayam
7. V.Jesumariyan
8. M.Gnanapaul
9. Siluvaithasan
10. J.Devasahayam
11. D.Dhasan
12. Jesinthal
13. Maria Sundari
14. Annakili
15. Christy
16. Gnanajothi
17. Rosali
18. Philomi
19. Pushpam
20. Michaelammal
21. Gnanapoo
22. Irudhayam .. Respondents in both the civil
revision petitions

C.R.P.(PD) No.1652 of 2003 filed under Section 115 of the Civil

Procedure Code against the order dated 2-8-2003 in I.A.No.978 of 2003 in O.S.No.293 of 2001 on the file of the Principal District Munsif Court, Nagercoil.

C.R.P.(PD) No.1737 of 2003 filed under Section 115 of the Civil Procedure Code against the order dated 2-8-2003 in I.A.No.979 of 2003 in I.A.No.336 of 2001 in O.S.No.293 of 2001 on the file of the Principal District Munsif Court, Nagercoil.

!For petitioners : M/s.P.Jyothi Mani

^For respondents: Mr.M.Rajasekar for R-2
Mr.P.Peppin Fernando for R-3/caveator

:ORDER

The petitioners filed I.A.No.978 of 2003 to implead them as defendants 21 and 22 in O.S.No.293 of 2001 and also filed I.A.No.979 of 2003 to implead them as respondents 21 and 22 in the injunction application in I.A.No.336 of 2001 in O.S.No.293 of 2001. These applications were dismissed by the trial Court. Hence, these two civil revision petitions.

2. The facts in brief are as follows:

(a) Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula Annai Church, represented by the Trustee filed O.S.No.293 of 2001 against the Bishop of Kottar, Kottar Diocese and others for a permanent injunction restraining the defendants from interfering with the management and administration of the Aralvaimozhi (Kurusadi) Devasahayam Mount and the properties of Thyua Vaigula Annai Church by the plaintiffs or from disturbing their possession in any manner. The plaintiffs filed I.A.No.336 of 2001 in O.S.No.293 of 2001 seeking for interim injunction. In the meantime, other defendants have been impleaded as defendants 2 to 20.

(b) The injunction application was argued and heard. At that stage, the petitioners herein, claiming themselves as former President of the Oor Committee and former Committee Member of Oor Committee respectively, filed the said two applications in I.A.Nos.978 and 979 of 2003 to implead themselves as defendants 21 and 22 and respondents 21 and 22, both in the suit and in the injunction application respectively, as they are proper and necessary parties.

(c) In the meantime, the Bishop, the first defendant filed the written statement and counter affidavit. The trial Court, before passing orders in the injunction application which was argued at length, heard the said I.As. for impleading the petitioners.

(d) It was contested by the Bishop that the petitioners herein are unnecessary parties and the suit was filed by the plaintiffs in representative capacity and therefore, the applications filed by the petitioners in I.A.Nos.978 and 979 of 2003 as former office bearers of the Oor Committee, being belated, are liable to be dismissed, as there are no merits in the same.

(e) Accepting the contention of the first defendant-Bishop, the said applications have been dismissed by way of common order. Since common order has been passed in the said I.As., the petitioners herein, the proposed defendants 21 and 22, have filed these two civil revision petitions.

3. Mr.Jyothi Mani, learned counsel for the petitioners would mainly

contend that the trial Court, without deciding as to whether the petitioners are proper and necessary parties in the suit and the injunction application, rejected the applications merely on extraneous grounds. On the other hand, the trial Court should have allowed the applications filed by the petitioners by impleading them as defendants, as neither the plaintiffs nor the first defendant would be affected and the presence of the petitioners in the suit would facilitate the trial Court to arrive at a proper and appropriate conclusion, thereby avoiding multiplicity of proceedings.

4. Mr. Peppin Fernando, learned counsel appearing for the caveator, the first defendant in the suit, while justifying the impugned order, would submit that the petitioners have come to the Court belatedly to drag on the proceedings, without allowing the trial Court to pass orders in the injunction application earlier filed by the plaintiffs. It is also stated by him that the petitioners' case is in support of the plaintiffs and as such, impleading them as defendants in the suit would be unnecessary.

5. Heard learned counsel for the second respondent also. Both the counsel for the parties would cite several authorities in support of their contentions.

6. Even at the threshold, it has to be stated that the plaintiffs filed the suit in a representative capacity of the Village and the Church, as Trustee, in the year 2001 in O.S.No.293 of 2001 and injunction application was also filed in I.A.No.336 of 2001. When the injunction application was taken up for hearing, the Bishop, the first defendant in the suit, filed the counter and also filed written statement. After hearing the injunction application, the trial Court posted the matter for orders. At this stage, the applications for impleading in I.A.Nos.978 and 979 of 2003 were filed on 1-7-2003 by the petitioners herein. According to the petitioners, they are the former office bearers of the Oor Committee and the administration of the Church was maintained by the Oor Committee and as such, they are necessary parties and have to be impleaded as defendants, so that they would put forth their case with reference to the management of the Church by the said Committee and that the delay in filing the applications was due to the fact that the first petitioner had been to abroad and the second petitioner was not in town for some time, and as such, they were not aware of the filing of the above suit.

7. Admittedly, the applications have been filed in I.A.Nos.978 and 979 of 2003 under Order 1 Rule 10(2) C.P.C. The guidelines given by various High Courts and the Supreme Court to invoke Order 1 Rule 10 (2) C.P.C. are as follows:

(i) The plaintiff may choose to implead only those persons as defendants as against whom he wishes to proceed with. However, it is open for the Court to add, at any stage of the suit, a necessary party in order to enable the Court to effectually and completely adjudicate upon the questions involved in the suit.

(ii) A necessary party is one without whom no order can be effectively made. A proper party is one whose presence is necessary for a complete and final decision of question involved in the proceedings. Addition of the parties would depend upon the judicial discretion which has to be exercised, in view of the facts and circumstances of a particular case.

(iii) The person to be added as one of the parties must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions

involved, but it should make him as necessary witness.

(iv) The third party cannot be considered to be a necessary party for deciding the main issue framed in the suit. Mere ground that inclusion of the proposed third party would not alter the structure of the suit may not entitle the party to ask the Court to implead the third party as a defendant.

(v) The Court may upon an application or suo motu, in a fit and proper case, implead a new party as defendant, even against the plaintiff's consent under certain circumstances. The discretion vested with the Court though wide is however circumscribed by the limitations which are built in the provisions contained in Order 1 Rule 10(2) C.P.C. Where a person is neither necessary nor proper party, the Court has no jurisdiction to add him as a party. If the question at issue between the parties can be worked out without anyone else being brought in, the stranger should not be added as a party. (vi) Normally, the Court should not add a person as defendant when the plaintiff is already available to project his case. The reason is that the plaintiff is the 'dominus litis'. He is the best judge of his own interest and it should be left to him to choose his opponent from whom he wants relief. If he seeks relief against a particular person, it is not the look out of the Court to see whether the relief should be claimed against the other persons, nor is it a duty of the Court to investigate whether the necessary parties have been added or left out.

(vii) A person is not to be added as a defendant merely because he or she would be incidentally affected by the judgment. The main consideration is whether or not the presence of such a person is necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit.

(viii) Persons whose interests would be affected by the litigation are entitled to come on record to protect their interests when those are jeopardised by the persons already on record.

8. The above principles have been laid down in the following decisions:

(i) AIR 1973 MADRAS 25 (P.R.Nallathambi vs. V.Raghavan);

(ii) AIR 1974 CALCUTTA 358 (N.C.Garai vs. Matri Bhandar);

(iii) AIR 1992 ALLAHABAD 119

(Lakshmi Narain vs. District Judge, Fatehpur);

(iv) 1998 (I) C.T.C. 626

(Somasundaram Chettiar vs. Balasubramanian).

9. In the light of the above principles, if we look at the facts of the present case, there is no difficulty in holding that the petitioners have not established either before the trial Court or before this Court that they are proper or necessary parties. Admittedly, no relief is sought for by the plaintiffs against these proposed defendants, the petitioners herein. On the other hand, the petitioners' claim for impleadment is for the projection of the plaintiffs' case, as they happen to be former office bearers of the Oor Committee. As a matter of fact, the plaintiffs filed the suit and injunction application, under Order 1 Rule 8 C.P.C. As the suit is filed as representative capacity for the Village, the plaintiffs should be allowed to conduct the case in the interest of the Oor Committee and the Village. No such allegation has been made by the petitioners that the plaintiffs have not

conducted themselves properly while prosecuting the suit.

10. In this case, apart from the delay, this Court is constrained to see that the petitioners have come forward with the applications without valid ground to make them as necessary and proper parties. This Court is of the view that the petitioners are neither necessary parties nor proper parties. At the most, the petitioners can be witnesses on the side of the plaintiffs during the course of trial.

11. Therefore, the civil revision petitions are dismissed. No costs. Consequently, C.M.P.Nos.12173 and 12783 of 2003 are also dismissed.

12. Before parting with these cases, this Court is constrained to refer to the practice adopted in the lower Courts.

(a) It is brought to the notice of this Court that before the trial Court, in this case, instead of the party filing affidavit in the form of counter, the Advocate concerned, on behalf of the first defendant, has filed counter. This practice is not a healthy one.

(b) In this context, it would be relevant to refer to the following observations made by Justice M.Srinivasan, as he then was, reported in 1989 (1) L.W. 543 (Nagarajan.V.P. vs. Prabhavathi) and the relevant portions of the headnote of the same are as follows:-

"In recent times, an unhealthy practice has grown up among the members of the Bar to come out with affidavits in support of their clients even without the clients themselves filing affidavits setting out the facts. Unfortunately the implications and consequences thereof have not been realised by them. Under O.19 R.2 C.P.C., affidavit will be evidence in an application and the Court could order cross-examination of the deponent. Thus the advocate who files an affidavit in support of an application is liable to be cross-examined and by filing the affidavit, he takes the role of a witness.

The Bar Council of India has framed rules under S.49(c) of the Advocates Act, 1961. The indiscriminate way in which affidavits are filed by counsel on records nowadays make the Court doubt whether any of them is aware of the above rule."

(c) It is also brought to the notice of this Court by both the counsel that in Kanyakumari District, all the Advocates would follow the regular practice of filing affidavit, counter affidavit or petition on behalf of the parties, without the affidavits sworn to by the parties and the same are entertained by the lower Courts. This practice must be, atleast in the future, stopped.

(d) Therefore, learned Principal District Judge, Kanyakumari District is directed to give administrative direction to all the subordinate judiciary in the Kanyakumari District, not to entertain the petition or affidavits on behalf of the parties, from the Advocates, without the affidavits sworn to by the parties.

M. KARPAGAVINAYAGAM,J.

After pronouncing the order, learned counsel for the parties requested

this Court to direct the trial Court to dispose of the suit early. It is noticed that the suit is pending from 2001. Therefore, the trial Court may dispose of the suit as expeditiously as possible.

CS

31-12-2003

Index: Yes

Internet: Yes

CS

To

1. Principal District Munsif, Nagerocil.
2. Principal District Judge, Kanyakumari District.

□