

Madras High Court

Karpoora Sundarapandian vs The Director Of School Education on 22 July, 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/07/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION (PD) No.651 of 2004  
AND C.M.P.NO.6429 of 2004

1. Karpoora Sundarapandian  
Ramalakshmi Ammal Kalvi  
Valarchi Kuzhu,  
(Educational Agency)
2. S.Nallathambi
3. G.Sangamirtham

... Petitioners

-Vs-

1. The Director of School Education,  
College Road,  
Nungambakkam, Chennai-34.
2. The Joint Director (Higher Secondary  
Education), College Road,  
Nungambakkam, Chennai-34.
3. The Chief Educational Officer,  
Sivaganga.
4. The District Educational Officer,  
Sivaganga.
5. K.Rajasekaran
6. K.R.Sathiyendran
7. S.Kapoorasundaram
8. S.P.Karpoorasundarapandian
9. Mrs.A.Rajeswari
10. Mrs.R.Ramalakshmi
11. R.Karpoorasundarapandian
12. S.Karunakaran
13. S.Rajasekaran
14. S.Rathnakaran
15. Mrs.S.Thangam
16. S.Kotravan
17. S.Vendhan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India as stated therein.

For Petitioners : Mr.G.K.R.Pandiyar  
For 5th Respondent : Mr.N.Thiagarajan SC  
for M/s.Rajnish Pathiyal  
For Respondents  
1 to 4 & 6 to 17 : No appearance

:O R D E R

The above Civil Revision Petition is directed against the fair and decretal order dated 25.3.2004 made in unnumbered I.A. in D.No.1745 of 2004 in O.S.No.108 of 1998 by the Court of Subordinate Judge, Sivaganga.

2. Tracing the history of the above Civil Revision Petition coming to be filed before this Court, what comes to be known is that the petitioners 1 and 2 herein have filed the above suit in O.S.No.108 of 1998 before the lower Court seeking to declare that the Educational Agency constituted by the Plaintiff on 27.1.1998 is validly constituted Educational Agency of the schedule mentioned institution, in the alternative direction for a decree providing for a scheme of management wherein all the members of Founders are duly and properly represented in proportion to their contribution made originally and providing for a rotational management of the schedule mentioned institution and for costs. Pending the suit, the third petitioner herein who is the 7th defendant in the above suit has filed an Interlocutory Application in the above suit praying to transpose her as the third plaintiff in the above suit.

3. It further comes to be known that the learned Subordinate Judge has rejected the above unnumbered I.A. in O.S.No.108 of 1998 on ground that since the High Court has directed to dispose of the suit within a period of six months as per the judgment dated 19.11.2003 in W. A.Nos.1095 and 1096 of 1998 and W.P.Nos.8515 and 15151 of 1999 and since the second plaintiff is acting as the representative of the first plaintiff institution and since the third petitioner herein who is the 7th defendant in the suit has already filed a memo. on 25.7.2003 to the effect that she has agreed to accept the decision to be taken by the Court, the present application to transpose her as third plaintiff in the above suit on the ground that the whereabouts of the second plaintiff is not known, is with an intention to drag on the suit proceedings. It is only testifying the validity of the said fair and decretal order, the petitioners have come forward to file the above Civil Revision Petition on certain grounds as brought forth in the grounds of revision.

4. During arguments, the learned counsel appearing on behalf of the revision petitioners, reiterating the stand taken by the third petitioner herein, who is the 7th defendant in the suit and who filed the Interlocutory Application in the above suit praying to transpose her as the third plaintiff, would submit that the rejection of the said petition by the trial court has given way for the above civil revision petition to be filed by her. The learned counsel lay emphasis on her legal right to file an

application of that sort before the lower Court and would also cite the following judgments respectively reported in:

1. AIR 1931 P.C. 162 (BHUPENDRA NARAYAN SINHA BAHADUR vs. RAJESWAR PRASAD BHAKAT AND OTHERS)
2. AIR 1931 MADRAS 590 (MAHOMED KANNI ROWTHER vs. NAINA MAHOMED ROWTHER)
3. AIR (34) 1947 MADRAS 205 (MOOKKA PILLAI ALIAS SUDALAIMUTHU PILLAI vs. VALAVANDA PILLAI AND OTHERS)
4. AIR (38) 1951 MADRAS 296 (G.F.F.FOULKES AND OTHERS vs. A.S.SUPPAN CHETTIAR AND ANOTHER)
5. AIR 1955 MADRAS 281 (KODIA GOUNDAR AND ANOTHER vs. VELANDI GOUNDAR AND OTHERS)
6. AIR 1958 S.C. 394 (Sm.SAILA BALA DASSI vs.SMT.NIRMALA SUNDARI DASSI AND ANOTHER)
7. AIR 1965 S.C. 1812 (R.S.MADDANAPPA (DECEASED) AFTER HIM BY HIS LEGAL REPRESENTATIVES vs. CHANDRAMMA AND ANOTHER)
8. AIR 1990 S.C. 642 (THE CHAIRMAN, TAMIL NADU HOUSING BOARD, MADRAS vs. T.N.GANAPATHY)
9. AIR 2003 KARNATAKA 348 (VEERABHADRAPPA AND ANOTHER vs. SMT. GANGAMMA AND ANOTHER)

5. So far as the first judgment cited above, which is a Privy Council judgment, is concerned, it is held therein:

"The course of adding pro forma defendants as co-plaintiffs should always be adopted where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of proceedings."

6. In the second judgment cited above, which was delivered way-back in 1931 by a single Judge of this Court, it has been held:

"There is no abatement in the case of a representative suit by reason of the plaintiff's death .... any of those persons on whose behalf suit was filed can apply to be made plaintiff."

7. In the third judgment cited above, a learned single Judge of this Court, way-back in the year 1947, has held in a Second Appeal while giving expression to Order 1 Rule 8 CPC that:

"Rule applies even to appeals. Appellate Court can allow amendment by permitting persons suing in individual capacity to sue in representative capacity when such amendment does not materially change nature of suit."

8. In the fourth judgment cited above, a Division Bench of this Court in a case reported in the year 1951 has held:

"Where the plaintiffs applied for an order under O.1, R.8 and obtained such an order, it is impossible thereafter for them to contend that the suit was not brought by them in a representative capacity."

9. In the fifth judgment cited above, a Full Bench of this Court, in the year 1954 while giving expression to Order 1 Rule 8 and Section 47 CPC has held:

"Order 1, Rule 8, sub-rule(2) provides that "any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the Court to be made a party to such suit." A "party" to such a suit is therefore one who is impleaded as a party or one who on an application under O.1 R.(8), sub-rule (2) is brought on record, that is, one who is 'eo nomine' made a party. The others who are not brought on record can be only deemed to be parties and will not be parties as such."

10. In the sixth judgment cited above, dealing with Order 1 Rule 10 and Section 151 CPC regarding transposition of appellant as respondent, the Honourable Apex Court has held:

"The Court can, if necessary, take action suo motu either under O.1, R.10 or in its inherent jurisdiction and transpose an appellant as respondent in the appeal."

11. In the 7th judgment cited above, the Honourable Apex Court while dealing with Section 99, Order 1 Rule 10(2) and Order 41 Rule 33 CPC regarding transposition of defendant as plaintiff has held:

"The power under the provision is exercisable by the Court even suomotu. The power ought to be exercised by a court for doing complete justice between the parties."

12. In the 8th judgment cited above, the Honourable Apex Court has held for Order 1 Rule 8 CPC.:

"... the grant of permission to the plaintiff to proceed under O.1, R.8 would be proper. Nobody in this situation can complain of any inconvenience or injustice. On the other hand, the Board is being saved from being involved in unnecessary repeated litigation."

13. In the last judgment cited above, a Division Bench of the Karnataka High Court has held:

"On careful perusal of the written statement, there has been a specific mention that the second plaintiff and her mother first plaintiff succeeded to the estate of deceased Smt.Shivalingamma and in fact, there had been a specific prayer for joint declaration of title in respect of 'B' schedule

properties in favour of both the plaintiffs. In view of the discussion supra and the legal position in this regard, in the opinion of this Court, there is absolutely no legal hurdle in upholding the claim of the second plaintiff in this behalf...."

Citing the above judgments, the learned counsel for the revision petitioners would pray to allow the above civil revision petition.

14. On the other hand, the learned senior counsel appearing on behalf of the 5th respondent, in his crisp arguments advanced adhering to the facts and circumstances involved in this particular case and citing the petition filed by the petitioner herein would point out that defendant No.7, who is the petitioner, has no cause of action to seek the remedy to transpose her as the second plaintiff in the place of the original second plaintiff whose whereabouts are not known, so as to represent the first plaintiff institution; that so far as the 7th defendant is concerned, the suit is already over; that she has already given her consent to a decree to be passed and therefore since she has no existing cause of action, she has no locus standi to file an application of this sort to transpose her as a plaintiff to continue the suit particularly representing the first plaintiff institution. The learned senior counsel would also cite a judgment reported in AIR 2 001 ALLAHABAD 280 (SIHASAN RAI vs. RAM NARAIN ALIAS RAMAYAN RAI AND OTHERS) wherein a learned single Judge of the Allahabad High Court has held:

"A defendant can be transposed as the plaintiff if the interest of the plaintiff as against the contesting defendant is common but where the plaintiff enters into a compromise with the contesting defendants, the cause of action against the contesting defendants ceases as regards the plaintiff who has filed the suit. If the pro forma defendant has any cause of action independently, it is always open to him to file suit against such defendants, who were impleaded in the suit, but the matter was compromised between the plaintiffs and such defendants. A suit, which has already been decided between the plaintiff and the defendant, cannot be reopened by permitting the pro forma defendant to be impleaded as the plaintiff in the suit."

On such arguments, the learned senior counsel would seek to dismiss the above civil revision petition with costs.

15. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is given to understand that the seventh defendant in the suit, having filed an application under Order 1 Rule 10 of the CPC, has sought to transpose her as the third plaintiff to the suit on the sole ground that the whereabouts of the second plaintiff, who is representing the first plaintiff, are not known. On the part of the lower Court, it would be strongly opposed on ground that the 7th defendant, as per her memo. filed before the trial Court dated 25.7.2003, has clearly stated that she is in perfect agreement with the decree that is to be passed and having submitted to the decree of the Court, now, stating that the second plaintiff who is the representative of the first plaintiff has gone somewhere and therefore to continue the suit on behalf of the first plaintiff/institution, she has to be transposed as the third plaintiff, she has filed the petition before the trial Court and without even numbering the application filed by the said Court, it has summarily rejected the claim of the 7th defendant remarking that it is only a tactic followed by

the petitioner to drag on the suit endlessly and it is this rejection order passed by the trial Court, which is being testified in the above civil revision petition.

16. Nine judgments have been cited on the part of the petitioners, the propositions held wherein have been extracted in the foregoing paragraphs. In all those judgments it has been held that 'in order to avoid multiplicity of proceedings, the transposition of party could be held valid and acceptable and that if necessary, the Court is having the power to transpose a defendant as the plaintiff and on the vice-versa.' This Court is in perfect agreement with regard to all those propositions held by the upper forums of law and cited on the part of the revision petitioner. But, whether those principles laid down could be applied to the facts of the case in hand is the point for consideration to decide the above application filed before the lower Court by the 7th defendant in the suit.

17. There is no denying of the fact that the 7th defendant who is figuring as the petitioner before the lower Court, and this Civil Revision Petition has filed a memo. dated 25.7.2003 before the trial Court wherein she has given her consent submitting for the decree to be passed in the above suit and that memo. is not even withdrawn so far and the said memo. is operating still. Whether the 7th defendant has got any right or locus standi to seek such a luxurious relief to transpose her as the third plaintiff so as to sit in the place of the second plaintiff whose whereabouts are not known and prosecute the suit of the first plaintiff institution is the point for consideration.

18. Two points are to be determined in this regard. The first point regarding the right of the seventh defendant to be transposed herself as the third plaintiff in the wake of the memo. filed by her submitting to the decree to be passed dated 25.7.2003 and secondly whether it is possible or necessary on the part of the 7th defendant to be permitted to conduct the case of the first plaintiff as the third plaintiff particularly since the second plaintiff who has been acting as the representative of the first plaintiff in the conduct of the suit is missing. In the considered opinion of this Court, the 7th defendant is neither entitled to seek for transposing herself as the plaintiff in the wake of the memo. filed by her submitting to the decree to be passed by the Court thereby herself losing cause of action so far as the conduct of the suit is concerned since in all sense, as rightly pointed out by the learned senior counsel for the respondents, her relief in the suit is already over and whatever be the judgment that is rendered, she must submit herself since the memo. filed by her is still in force.

19. Secondly, the reason attributed on the part of the 7th defendant for carrying on with the claim of the first plaintiff/institution representing the same on ground that the whereabouts of the second plaintiff, who is representing the first plaintiff are not known, is neither satisfactory nor reasonable. Simply stating that the whereabouts of the second plaintiff are not known, the 7th defendant cannot seek for the relief of transposing herself as the third plaintiff to sit in the place of the second plaintiff and to represent the first plaintiff institution so as to conduct the suit in the representative capacity of the first plaintiff is not an acceptable point since unless seven years lapse from the time of missing of a person, he is considered to be alive and only on the expiry of the 7th year, the second plaintiff whose whereabouts are alleged to have been not known could be declared to have died a legal death and until then, the question of the missing of the second plaintiff and the 7th defendant being permitted to be transposed herself as the third plaintiff to conduct the suit sitting in the position of

the second plaintiff would not arise.

20. It is for the common knowledge that in case the Court concede the request of the 7th defendant to transpose herself as the third plaintiff and after passing of an order of that sort, if the second plaintiff comes to the picture, what shall be the consequence of the order passed by the Court in transposing the 7th defendant as the third plaintiff is yet another question to be answered by the revision petitioner and therefore under no circumstance, regarding the facts of the case, such a relief could be granted and the lower Court has rightly rejected the petition filed by the 7th defendant for reasons assigned.

21. Above all, the direction issued by a Division Bench of this Court in the judgment dated 19.11.2003 in W.A.Nos.1095 and 1096 of 1998 and W.P.Nos.8515 and 15151 of 1999 to complete the trial procedures and deliver the judgment on merits and in accordance with law is yet another aspect to be taken care of and at any cost it should not be permitted to go beyond the time frame fixed by this Court. Therefore, the Court below is perfectly right in rejecting the plea of the petitioner under this score also. For all the above discussions held, this Court is not inclined to cause its interference into the well considered and merited order passed by the lower Court in outright rejecting the petition filed by the petitioner in the aforesaid manner and hence the following order:

In result,

(i) the above Civil Revision Petition does not merit acceptance and the same is dismissed.

(ii) The fair and decretal order dated 25.3.2004 made in unnumbered I.A. in D.No.1745 of 2004 in O.S.No.108 of 1998 by the Court of Subordinate Judge, Sivaganga is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, C.M.P.No.6429 of 2004 is also dismissed.

Index: Yes Internet: Yes gr/Rao To The Subordinate Judge, Sivaganga.