

**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.
AT KUNIGAL.**

Dated this the 4th day of JULY 2017.

O.S.NO. 375/2014

**PRESENT; Sri. J.KRISHNA , B.A.,LL.B.,
Prl.Civil Judge & JMFC.,
Kunigal.**

**Plaintiffs:- 1. Sri.Giriyappa ,
S/o Late Byategowda,
Aged about 65 years,**

2. Venkatesha
S/o Late Byategowda,
Aged about 58 years.

3. Thammanna
S/o Late Dasamesthri,
Aged about 49 years.

4. J.K.Ramesha
S/o Kemparamaiah,
Aged about 47 years.

5. J.B. Muddabyategowda,
S/o K.Bettgaiah,
Aged about 49 years,

The Plaintiffs no.1 to 5 are
Residents of Jaladigere village,
Yediyur hobli, Kunigal Taluk.

(Represented by Pleader Sri.Narasimhaiah..)

Vs.

**Defendants: 1. Sri.J.V.Nagaraja
S/o Late J.P.Venkataramaiah,**

Aged about 50 years,

2. **Sri.J.B.Srinivasa,**
S/o Byataiah,
Aged about 33 years,

3. **J.R.Mohangowda**
S/o Late J.V.Ramesha,
Aged about 21 years.

The defendants no.1 to 3 are
Residents of Jaladigere village,
Yediyur hobli, Kunigal Taluk.

(Defendant No.1,: By pleader Sri.A.R.Rangaswamy.
Defendant No.2 and 3:Absent .)

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**ORDERS ON APPLICATION FILED UNDER
ORDER VII RULE 11 (a) and (b) of C.P.C. BY
DEFENDANTS.**

Defendant has filed this application and prays to
reject the plaint .

In support of the application defendant no. 1 filed
affidavit and submitted that plaintiffs have filed suit for
declaration and injunction. They have no legal character or
right whatsoever to pray such declaration with respect to suit
property. They have no cause of action to file this suit.
Hence, Plaint is liable to be rejected under order 7 rule 11
(a) of C.P.C. further it is contended that under section 34 of
Specific relief Act since plaintiffs have no right they cannot
file this suit . Hence, plaint is liable to be rejected under
order 7 rule (b) of C.P.C..

2. The Plaintiffs have filed objections submitted that the averments made in the affidavit filed in support of application is false. It is submitted that plaintiffs are the devotees of Jaladigere Ammanavara Temple and villagers of Jaladigere in which temple is situated. The suit property is the property of Jaladigere Ammanavara temple. Plaintiffs being the care takers and devotees, they are very much interested in development of temple and its properties. Defendant is trying to grab the property. Hence, they have filed this suit. Therefore, application is not maintainable either in law or on facts and prays to dismiss the application.

3. Heard the advocate for defendant Sri.A.R.R. and Sri.N.A. for plaintiffs. Perused the records.

4. On perusal of the records, and on hearing the advocate this court framed the following Points for consideration:

1. Whether defendant shows that plaintiff does not disclose cause of action. liable to be rejected. ?
2. Whether defendant shows that suit is barred Under section 34 of Specific relief Act.?
3. What order.?

5. My answers to the above said points are as under:

Point No.1_ In the Negative,

Point No.2- In the Negative,

Point No.3: As per final order, for the following:

REASONS

6. **Point No1. and 2:** On perusal of records, it is come to know that plaintiffs have filed this suit to declare suit property is the absolute property of Jaladigarama deity. That Jaladigeramma temple is situated at Jaladigere village, Yediyur hobli, Kungial Taluk. It belongs to 35 Vokkaliga and 8 Kuruba family and also few Harijan people . Plaintiffs are the devotees and villagers and also they are interested peoples in development of the temple. Therefore, this suit is filed in the representative capacity for and on behalf of villagers and temple. Further, it is pleaded that defendant is trying to sell the suit property belongs to Jaladigere Ammanara temple and he has entered into sale agreement with defendant no..2 and 3. Hence, they have filed this suit.

7. On perusal of plaint, it is clear that plaintiffs have filed suit on behalf of J.Ammanara temple asserting the right

and title of Jaladigee ammanara deity and it is also specifically pleaded defendant is trying to grab the property. This much is sufficient to constitute a cause of action on bare perusal of plaint. Further, defendants argued that under Section 34 this suit is not maintainable. Under Section 34 of Specific Relief Act, it is clear that when the right is denied it gives rise to cause of action. But, such provision does not say about barring of any suit muchless suit of this nature. Hence, the arguments canvassed by the defendant is not tenable. Accordingly, I answer point no.1 and 2 in the Negative.

8. Point No.3: In the result, I pass the following:

ORDER

Application filed I.A.VII Rule 11(a) and (b) is rejected.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and then pronounced by me in the open court on this the 4th day of July 2017.)

**(Sri. J.KRISHNA .,)
Prl.Civil Judge & JMFC.,
Kunigal.**

Orders on I.A..no. II

The plaintiffs have filed this application under Order 5 Rule 20(1) of r/w Under order 1 Rule 8 of C.P.C. and prays to appoint special ameen to publish the notice of this suit in the public chavadi at Jaladigere and at the temple Jaladigeramma to enable the common interested people to come and join in this suit as a plaintiff or defendants.

2. In support of the application plaintiff no.3 filed affidavit submitted that this suit is filed in the representative capacity for and on behalf of devotees of Jaladigere Ammanavara Temple, Jaladigere and for and on behalf of villagers of Jaladigere . Therefore, it is necessary to obtain the permission as per Law . Hence, this application seeking permission to file this suit and to publish the notice in public chavadi of Jaladigere to enable the common interested people to come and join in this suit as plaintiff and defendants. Hence, prays to allow the application.

3. The advocate for defendants filed objections , denied all the averments of affidavit as false. The application

is not maintainable either in law or on facts. This defendant has taken specific defence in his written statement then plaintiff filed this application. Hence, same is not maintainable . It is submitted the persons who files suit in the representative capacity mandatorily comply the provisions under order 1 rule 8 of C.P.C. The Non compliance is a incurable defect. Hence, application and suit is liable to be dismissed.

4. Heard the advocate for plaintiff and defendants.

Perused the records.

5. On perusal of records, this court framed the following points for consideration:

1. Whether Plaintiff made out sufficient ground to allow the application. ?
2. What Order.?

REASONS

6. On perusal of records, it is come to know that plaintiffs have filed this suit to declare suit property is the absolute property of Jaladigarama deity. That Jaladigeramma temple is situated at Jaladigere village, Yediyur hobli, Kungial Taluk. It belongs to 35 Vokkaliga and 8 Kuruba family and also few Harijan people . Plaintiffs are

the devotees and villagers and also they are interested peoples in development of the temple. Therefore, this suit is filed in the representative capacity for and on behalf of villagers and temple.

7. At the very inception of the suit, though they have pleaded it is a suit of representative capacity , they fail to file application under order 1rule 8 of C.P.C. to obtain necessary permission to file this suit. Therefore, this application is filed to obtain permission, on 18.12.2014 seeking an order to appoint special ameen to publish the notice of this suit in the public chavadi Jaladigere and at the temple. At Plaint para no.2 plaintiffs have clearly averred that they have filed necessary application under Order 1 Rule 8 to take notice through the daily newspapers. But, they have not filed application with the suit. Subsequently, filed this application.

8. The advocate for defendant argued that the permission under order 1 rule 8 is mandatory and in the absence of permission suit is not maintainable and also this application is filed at belated stage is not maintainable. It

is true that permission under order 1 rule 8 is mandatory. The suit is filed on behalf of a deity Jaladigiramma deity and for the villagers who have common interest in the temple and its property. Plaintiffs being a villagers and devotees of the temple they have every right to file a suit by himself and on behalf of all. Therefore, though the permission is not granted under order 1 rule 8 suit will not be defeated. Because, plaintiffs have the interest in the temple and its properties as a devotees and the villagers. In this regard, it is worth to note the decision reported in **(1990)1 SCC 266** between **Kalyansingh Vs. Smt.Choti** and Others. Wherein the 3 Judge Bench of Hon'ble supreme Court has held that:

“Representative Suit- Filing of suit by representative of a community not enough- Court permission mandatory- but suit filed by a member of a community to assert his right in the community property or to protect such property seeking removal of encroachment therefrom , held , need not comply with the requirements of rule 8. ”

Here in this case, plaintiffs being the members of the village and devotees filed this suit to protect the property of the temple. Therefore, in view of the observation of the Hon'ble supreme Court stated supra, the suit need not required to be mandatorily have the permission. However,

plaintiffs have opted for permission to file this suit and prays to issue notice to the public to enable the common interested people to come and join in the suit as plaintiffs and defendants. Therefore, I answered point No.1 in the Affirmative.

Point No.2: For the reasons stated above, I proceed to pass the following:

ORDER

The application filed under Order 5 Rule 20 r/w Order 1 rule 8 of C.P.c. is hereby allowed.

Plaintiffs are permitted to file the suit on behalf of devotees of Jaladigere Ammnavara temple and Jaladigere villagers. Accordingly, plaintiffs are directed to take notice of this suit in the daily newspaper having wide circulation in the locality to enable the common interested people to come and join this suit.

Office is directed to issue draft publication if draft is filed by plaintiff.

Prl.Civil judge & JMFC.,
Kunigal.

