



A.S.(MD)No.160 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:18.07.2023

PRONOUNCED ON: 09.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.160 of 2015

and

M.P.(MD)No.1 of 2015 and

C.M.P.(MD)No.3173 of 2018

Palani Town Viswa Brahmana

Mahajana Sangam (REGD,7/1958)

through its Secretary.

: Appellant/Defendant

Vs.

1.P.Thangavel

2.S.Ravichandran

3.R.B.S.Mani

4.P.Duraichamy

5.R.Thangavel

6.R.Vajravel

: Respondents / Plaintiffs

PRAYER:- Appeal Suit filed under Order 41 r/w Section 96 of the Code of Civil Procedure against the judgment and decree dated 24.09.2014, passed in O.S.No.30 of 2011, on the file of the Additional District Judge, Dindigul, decreeing the suit.



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For Appellant : Mr.S.Lakshmanan

For Respondents :Mr.G.Prabhu Rajadurai
for Mr.J.Lawrence
for R.2 to R.5
: R.1 – died

: No Appearance for R.6

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.30 of 2011, dated 24.09.2014, on the file of the Additional District Court, Dindigul.

2. The respondents/plaintiffs have filed the above suit claiming the following reliefs

(a) to declare that the amendment of the bye-laws of the defendant Society dated 27.06.1998 with regard to “admission of membership is up to the decision of Executive Committee” is null and void;

(b) to remove the defendant from functioning as Secretary of the defendant Society;



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(c) to direct the defendant to admit the plaintiffs as members of the Society;

(d) to direct the defendant to conduct proper election for electing the executive members of the Society;

(e) to frame a scheme to lease or let the suit property through public notice and public auction; and

(f) to pass such other reliefs as the Court deems fit and proper.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the original suit.

4. The plaintiffs' case in short is as follows:

(a) The suit properties are belonging to Palani Town Viswabrahmana Mahajana Sangam for more than 100 years. Palani Town Viswa Brahmin Community is having five major sects viz., Manu, Maya, Dwastha, Silpy and Viswagnya. The said society was founded by the Community elders for the welfare of the Community people and for the charitable purposes. The said Sangam was registered on 06.03.1958 as per the Societies Registration Act, vide Registration No.7/1958. As per the bye-laws, Palani Town Viswa Brahmin Community people



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belonging to the above five sects and who are above 18 years of age are eligible to become the member of the said Sangam. More than 6000 families are residing in Palani Town belonging to the said Community. The said Sangam or its properties did not belong to any individual or to any joint family and hereditary family.

(b) While so, the Secretary of the defendant Society, in collusion with some of the Executive Members were doing all sorts of illegal acts and irregularities in the management of the affairs and management of the funds of the Sangam. The Sangam is having a marriage hall called as Viswa Nilayam, but there were no proper accounts with regard to the income and expenditure of the said marriage hall. Though the defendant used to collect donations from the Community people, they are not issuing proper receipts for the same and they are also not maintaining proper accounts with regard to the income and expenditure for the suit properties. The plaintiffs and some other residents of Palani belonging to the said Community requested the defendant on 31.05.2008 to admit them as members of the said Sangam. They were informed to submit application first and later on they would be admitted and on that basis, they have submitted their applications, but subsequently they were informed that as per the bye-laws, only eligible member could be



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admitted. When the plaintiffs and others were demanding the accounts for the Sangam, they were threatened by the defendant Secretary and hence, several complaints came to be lodged with the District Registrar, Palani, who in turn by his proceedings in Na.Ka.No.414/A3/2009, dated 28.01.2009 stated that as per the bye-laws, the plaintiffs and others cannot be admitted and they should approach the civil Court and get orders, which is very much against the Rule 2 of the Society's bye-laws. Hence, the plaintiffs were put to several mental agony and hardship as they were denied membership without any valid reason by the Sangam and so called office bearers were acting as per their own whims and fancies.

(c) The first plaintiff has lodged a complaint with the Inspector of Police, Palani Town Police Station seeking action for the high handed and unlawful acts of the defendant and the complaint was forwarded to the Revenue Divisional Officer, Palani, who in turn by his proceedings in Na.Ka.No.6178/2009/A6, by treating the existing members of the Sangam as “A” party and the plaintiffs as “B” party, called for a peace committee meeting on 15.09.2009 and after elaborate discussions, it was concluded that both parties have to approach the competent civil Court for redressing their grievances.



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(d) In the Executive Committee of the defendant Society, there were 10 members, who are all the relatives of the Secretary. Though 6000 families were residing in Palani, they used to elect their close relatives as office bearers, in order to prevent the community people from questioning the illegal acts of the Secretary and other office bearers and from seeking accounts, they have amended the bye-laws on 27.06.1998 and the same are very much against the bye-laws framed at the time of the registration of the Society in 1958. They have amended and added Rule No.10 which says that the Executive Committee can only take a decision with regard to the admission of any new member to the Sangam. Hence, the amendment of the bye-laws is highly arbitrary and illegal. The plaintiffs came to know only on 17.07.2009, when they have received the response under the RTI Act . As per the annual report of the Society for the year 2006-2007, there were only 87 members and out of the above 87 members, 17 members were already reported dead at that time. Sangam did not induct any new member after 1987. Two members were inducted on 31.01.1996, one member was inducted in 1998 and 11 members were included on 28.01.2001.



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(e) The Palani Town Viswabrahmana Mahajana Community people who are residing in other States and in other Countries were invited for the Kumbabhisekam of Kaliasman Kovil in Giri street, Palani, which is belonging to the defendant Sangam and huge amounts were collected by way of donations for celebrating the Kumbabhisekam of the said temple, but no proper accounts and receipts were given to such donars and devotees and thereby, the Secretary with close associates and with henchmen, has misappropriated the temple funds. As per the reply received from the District Registrar, Palani in response to their application under R.T.I. Act, they came to know that the Sangam has not submitted the annual reports and the auditor statement for the year 2007-2008 before the Registrar office and that the Society was lastly renewed on 31.03.2007 and that they have not submitted the accounts of the Sangam with regard to the income and expenditure every year. The above facts clearly proves that the Secretary has not discharged his duties properly and has not cared to look after the welfare of the members of the Society. The defendant Society is a public charitable institution. The Secretary and his team were not taking any interest for the development of the community people, for which the Sangam was established. When the plaintiffs were insisting for membership, the Secretary has filed a suit



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in O.S.NO.305 of 2008 before the District Munsif Court, Palani, claiming permanent injunction against them with ulterior motive.

5. The defence of the defendant in short is as follows:

(a) The suit properties are belonging to the defendant Society. The defendant Society is functioning as per the provisions of its own bye-law and the provisions of the Tamil Nadu Society Registration Act, 1975. The members of the Society are being admitted as per Clause 10 of the Bye-law of the defendant Society. The right to admission of membership into the Society shall be only among three mamool generation of Palani residents above 18 years of age belonging to Palani Town Viswa Brahmana Community people ie., Manu, Maya, Dwastha, Silpy and Viswagnya. The plaintiffs' allegations with regard to the irregularities, mal-practice, misappropriation and failure to submit the accounts and the annual reports to the authorities under the Societies Registration Act are denied as baseless.

(b) The plaintiffs have started an organisation in 2008 as “Viswakarma Samuga Arvalargal Committee and caused interference in the administration of the defendant Society. Hence, the defendant



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Society filed a suit for permanent injunction against the plaintiffs in O.S.No.305 of 2008 and the same is pending on the file of the District Munsif Court, Palani. The plaintiffs are not eligible to become the members of the defendant Society as per its bye-laws and they have no *locus standi* to question the defendant's Society. The existing members of the Executive Committee are not close relatives of the Secretary as stated in the plaint. They are duly elected as per the provisions of the bye-laws of the Society from various branches of Viswabrahmana Mahajana Community at Palani. The defendant Society is not a public charitable institution as stated in the plaint. The plaintiffs have no *locus standi* to question the Society as the plaintiffs are not interested persons of the Society. The suit is bad for non-joinder of necessary parties. They have filed the suit for vexatious and vested interest and not for the public interest.. They have no cause of action to file the suit. Hence, the suit is liable to be dismissed with costs.

6. The trial Court, upon considering the above pleadings, has framed the following issues:

(1) Whether the plaintiffs have *locus standi* to seek the relief of declaration that the amendment of bye-law of the Palani Town Viswa



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Brahmana Mahajana Sangam, dated 27.06.1998 restricting the induction of the members to the society only with the approval of Executive Committee is null and void?

(2) Whether the plaintiffs have locus standi to seek the removal of the defendant from functioning as Secretary of the society?

(3) Whether the plaintiffs have locus standi to seek the direction against the society management for induction of their membership into the society?

(4) Whether the plaintiffs have locus standi to seek an order for conducting proper election for electing the executive committee of the Palani Town Viswa Brahmana Mahajana Sangam?

(5) Whether the plaintiffs are entitled to seek an order to frame a scheme to lease/let the properties of the society through public advertisement and public auction?

(6) Whether the suit is bad for non-joinder of necessary parties?

(7) Whether the Court has pecuniary and territorial jurisdiction to try the present suit?

(8) To what reliefs the plaintiffs are entitled?



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7. The learned trial Judge, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both sides, has passed the judgment and decree, dated 24.09.2014, by answering all the issues in favour of the plaintiffs, decreed the suit, almost as prayed for. Aggrieved by the impugned judgment and decree, the defendant has preferred the present Appeal Suit.

8. The learned Counsel for the appellant/defendant would submit that the suit as framed is not maintainable, as the plaintiffs have filed the suit in their individual capacity and not in a representative capacity, that Section 92 C.P.C., is applicable only to the Trust and not to the Societies registered under the Societies Registration Act, that the defendant Society is not a Public Charitable Institutions, but it is only a Society formulated by five branches of Viswa Brahmana Community at Palani Town and that all the suit properties, even according to the plaintiffs are owned by the defendant Society and as such, there was no dedication of any property.



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9. The learned Counsel would further submit that the plaintiffs, being non members of the defendant Society, cannot question the validity of any proceedings of a registered Society, that the plaintiffs have not even pleaded as to how they are entitled to become the members of the defendant Society, that they have not adduced any evidence to establish their eligibility to become the members of the defendant Society and that though the defendant has specifically denied and disputed the plaintiffs' eligibility to become the members and in the absence of any specific pleading and the prayer with regard to their eligibility to become members, the trial Court has erred in directing the defendant Society to admit the plaintiffs as its members.

10. The learned Counsel would further submit that the original bye-laws of the Society empowers the Society to amend the provisions of its memorandum, that the defendant Society as per the provisions of the original bye-laws has amended the same and the same was approved by the Registering Authority and that since the amended bye-laws are not contrary to the provisions of law, the amendment dated 27.06.1998 cannot be declared as null and void. He would further submit that though the resolution was passed and the amendment came into effect on



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and from 27.06.1998, its validity or any vires of the amendment cannot be challenged after the lapse of more than 12 years.

11. The learned Counsel would further submit that the official witness P.W.3 – Sub Registrar in his evidence would say that the membership of the Society can be decided by the General Body of the Society alone, that D.W.3 would also depose that the defendant Society has submitted their annual statements and audit statements properly and the the Registration Authorities have inspected the Society on the complaints of the plaintiffs, but not found any irregularities except the comment in Ex.X1 to the effect that “all records are properly maintained, but reason for the admission of the new member is not acceptable”, and that the powers of Registrar under the Tamil Nadu Societies Registration Act are very much administrative and not adjudicative and they can only exercise ministerial act, but in the present case they have exceeded their powers.

12. The learned Counsel would further submit that every person has a right to form a Society in accordance with the Tamil Nadu Societies Registration Act, but no one can claim a right to become membership of



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the particular Society, as membership of voluntary association is not a fundamental right. He would further submit that since the plaintiffs have started to cause problems and disturbances to the smooth functioning of the defendant Society, they were forced to file a suit in O.S.No.305 of 2008 for permanent injunction. The learned Counsel would submit that the learned trial Judge, without any pleadings or prayer and without any evidence, has ordered for the removal of the Secretary and more importantly the said Secretary was not a party to the proceedings and that they have not taken steps to implead the then Secretary against whom the decree came to be passed.

13. The learned Counsel for the respondents/plaintiffs would submit that the present appeal filed by the then Secretary – P.W.1 is not maintainable, as he has no locus standi to file the present appeal, as new office bearers were elected as per the General Body Meeting held on 27.11.2014 pursuant to the trial Court decree, that the then Secretary has not chosen to approach the appellate Court immediately, but after the lapse of more than 10 months, the above appeal has been filed, that they have already enrolled more than 390 Viswa Brahmans as its members and the elections were conducted as per the Tamil Nadu Societies



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Registration Act and new office bearers were elected, that the then Secretary and office bearers were already removed and as such, the then Secretary was not at all authorized to file the above appeal and that therefore, the appeal itself is not maintainable.

14. The learned Counsel would further submit that as per the proceedings of the District Registrar under Ex.A.13, dated 29.11.2010, there is no amendment of bye-laws to the effect of induction of membership only for family holding three generation membership, that D.W.2 – Officer would admit that in Exs.A.1 and A.3, there was no rule to obtain Court orders for induction of new members to the Society, that the amendment of the byelaws impaired the right of the persons belonging to Viswa Brahmana Community residing at Palani who are above 18 years of age to become the members of the Society by virtue of the Society's primary objective and that therefore, the plaintiffs have *locus standi* to seek membership of the Society by virtue of the primary objective of the Society. He would further submit that the then Secretary did not produce any document as to the details of the Executive Committee elected in accordance with bye-laws, that the defendant did not even file Form VI and VII with the Registrar of Societies for the last



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invalid, despite showing that the amendments were made as required by Section 4(2) of the Tamil Nadu Societies Registration Act which mandates every existing Society to register as a Society under the said Act, that the defendant Society has amended sever other clauses including the eligibility of the members and that therefore, the plaintiffs' allegation that the said amendment was intended only to exclude the plaintiffs is not correct?

(2) Whether the trial Court erred in granting a direction for the removal of the then Secretary Muthuvel @ Ramesh, despite showing that the above said Secretary was not a party to the proceedings and that the plaintiffs have neither raised any pleadings nor adduced any evidence complaining mismanagement of the affairs of the Society or misappropriation of the Society's funds against him?

(3) Whether the trial Court erred in giving a direction to the defendant Society to admit the plaintiffs as members of the said Society, despite showing that the plaintiffs have neither pleaded nor shown that they were possessing the required eligibility to become the members of the Society as per the byelaws of the Society and more importantly in the absence of any specific pleading or prayer with regard to the eligibility of the plaintiffs to become the members of the Society?



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(4) Whether amendment to byelaw in question of the defendant Society is valid?

(5) Whether the plaintiffs being non members of the Society can challenge the proceedings and affairs of the Society?

(6) Whether the suit as framed is maintainable?

(7) Whether the suit is bad for non-joinder of necessary party?

(8) Whether the judgment and decree dated 24.09.2014 passed in O.S.No.30 of 2011 is liable to be interfered with?

(9) To what reliefs, the parties are entitled?

C.M.P.(MD)No.3173 of 2018:

17. The above petition is filed for reception of additional evidence.

18. The appellant is the petitioner. In the affidavit filed in support of the above petition, it has been stated that they have already filed additional typed set in USR No.4301 of 2015 and a copy of the same was served to the other side even at the time of hearing of stay application in M.P.(MD)No.1 of 2015 in the above appeal, that the documents which sought to be received were originated after passing of the impugned judgment and decree and as such, the appellant was unable to produce



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the same before the trial Court, that the proposed documents are important to decide the case on merits, which discloses the subsequent events of the case having serious implications of the impugned judgment and decree and to render complete justice in the present appeal, that the respondents cannot have any valid objection for receipt of the same and that no oral evidence is required, but to be formally received by the Court. No doubt, the appellant has produced the copies of 18 documents in additional typed set received in USR No.4301 of 2015. Admittedly all the documents are subsequent to the impugned judgment and decree.

19. The respondents have not filed any counter to the said application.

20. The learned Counsel for the petitioner/appellant would submit that after passing of the impugned judgment and decree, the plaintiffs have taken the law into their hands, that two F.I.Rs came to be registered in Cr.No.410 of 2014 of Palani Adivaram Police Station and Cr.No.20 of 2015 of Palani Town Police Station, that the plaintiffs have convened a meeting by themselves without inviting the then office bearers and the executive members of the Committee, that thereafter the plaintiffs have

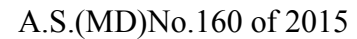


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filed a Writ Petition directing the District Registrar to record the Form VI and VII submitted by them in respect of the Society and that they have also filed an Execution Petition for punishing the then office bearers for contempt, alleging the violation of the impugned judgment and decree.

21. It is pertinent to mention that the proceedings referred by the appellant were not disputed by the respondents/plaintiffs. In appropriate cases, the appellate Court can take note of the subsequent events and developments. It is the specific case of the appellant/defendant that subsequent to the impugned judgment and decree, they have forcibly occupied the office of the Society and the properties attached to it, despite the stay granted by the trial Court as well as by this Court. But according to the respondents/plaintiffs, they have assumed the charge of the Society as per the judgment and decree passed by the trial Court, that the defendant has not preferred the appeal at that time and more importantly, the person who has filed the appeal, has no locus standi to file the above appeal as he was already removed from the post of Secretary.



25. As rightly contended by the learned Counsel for the plaintiffs, there is no stipulation of any condition that the persons who wanted to become the members of the Society should get the orders of the civil court and there is also no stipulation of any condition that induction of membership is only for family holding three generation membership. As



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rightly pointed out by the learned Counsel for the plaintiffs, the office of the District Registrar has sent a reply in response to the RTI application of the fifth plaintiff under Ex.A.13, wherein it has been specifically observed that in the amended byelaws, there is no stipulation of any condition that induction of membership only is for the family holding three generation membership. But according to the plaintiffs, all persons residing in Palani Town and belonging to five sects of Viswa Brahmana Community and who are all above the age of 18 years are eligible to become the members of the Society. It is not in dispute that the Viswa Brahmana Community is having 5 sects viz., Manu, Maya, Dwastha, Silpy and Viswagnya. The learned trial Judge, by considering the original byelaws and amended byelaws, has observed that as per Clause 2 of the original byelaws, all male members belonging to Palani Town Viswa Brahmana Community and above 18 years of age, were considered as the members of the Society, but while amending the byelaws, they have added the descendants (மாழல் சந்ததமிழனர்) of the members enrolled at the time of registration of the Society, who are only eligible to become the members and that the amendment was made only to prevent the other members including the plaintiffs from becoming the members of the society and the relevant finding of the trial Court is extracted hereunder



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for better appreciation:

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“18. பழனி டவுனில் உள்ள தே வி!வ பிரமாண சமுதாயத்தைச் ுசர்ந்த 18 வயதுக்கு ுமற்பட்ட ஆண்கள் அனைவரும் சட்கத்தின் அட்கத்தினர்களாக ுசர்ந்து செயல்பட ுவண்டுமென்பதுதான் தேத சட்கத்தின் பிரதான ுநாக்கமாகும். ஆகையினால் சட்கத்தில் அடுத்த தலைமுறையில் புதியதாக வி!வ பிராமண சமுதாயத்தைச் ுசர்ந்த உறுப்பினர்கள் ுசர்வதை தடுக்கும் விதத்தில் மாமுல் சந்ததியினர் என்ற வார்த்தையை காரணம் காட்டி வாதிகளையும்இ மற்றவர்களையும் பிரதிவாதி சட்கத்தின் நிர்வாகக் குழு நிராகரிப்பது எவ்வகையிலும் ஏற்றுக் கொள்ளத்தக்கதல்ல.

19. மாமுல் சந்ததியினர் என்பதற்கு பிரதிவாதி தரப்பில் தரும் விளக்கம் என்னவென்றால் ஏற்கெனுவ சட்கத்தில் உறுப்பினராக தேந்தவரின் வாரிசு அல்லது சந்ததியினர் என்பதாகும். அத்தகைய ஒரு விளக்கம் வா.சா.ஆ.1 மற்றும் 3ல் எந்தவொரு டேத்திலும் குறிப்பிடப்படவில்லை. ஆகையினால் மாமுல் சந்ததியினர் என்பது வி!வ பிராமண சமுதாயத்தைச் ுசர்ந்த 5 பிரிவுகளைச் ுசர்ந்த 18 வயதுக்கு ுமற்பட்ட அனைத்து ஆண் மக்களையும் குறிப்பதாகத்தான் கருத ுவண்டியுள்ளது. அதன் அடிப்படையில் பார்க்கும் ுபாது வாதிகள் பழனி டவுனில் வசிக்கும் வி!வ பிராமண சமுதாயத்தைச் ுசர்ந்தவர்கள் என்பதால் அவர்கள் சட்கத்தின் உறுப்பினர்களாக ுசர்வதற்கு உரிமை உடையவர்கள் என்ற முடிவு செய்யப்படுகிறது.”



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26. As rightly contended by the learned Counsel for the defendant, the learned trial Judge, on the basis of the above findings, has decided most of the issues in favour of the plaintiffs. At this juncture, it is necessary to refer the exact clauses found in the original as well as amended byelaws and Clause 2 is extracted hereunder:

“செந்தத்தின் அடத்தினர்களும் ஸயாக்யதாம்சமும்

(1) பழனி டவுனிலுள்ள வி!வம்பிராமண மஹான சடத்ததைச் ஸர்ந்த மனுஇ மயஇ துவ:டஇ சில்மிஇ வி!வங்ஙஇ ஆக 5 வகுப்புகளைச் ஸர்ந்த ஆண்கள் 18 வயதுக்கு ஸமற்பட்ட பங்சபிர்மகுல சந்ததியார் அனைவர்களும் ை: சடத்தின் அடத்தினராவார்கள்.”

27. As rightly contended by the learned Counsel for the defendant, it is pertinent to note that the words used when referring the persons to be eligible for the membership, as male members of above 18 years of age, belonging to 5 sects attached to the Viswa Brahmana Mahajan Sangam at Palani Town. There is vast difference between the words Viswa Brahmana Mahajana Sangam and Viswa Brahmana Community. Moreover, the word (“சந்ததியர்”) “decendants” finds place in the said clause No.2.



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28. As rightly contended by the learned Counsel for the defendant, there is no much difference between the eligibility criteria prescribed in Ex.A.1 – original byelaws and in Ex.A.3 amended byelaws. Hence, the very contention of the plaintiffs that all male members who are all above 18 years of age and belonging to 5 sects of Viswa Brahmana Community residing at Palani Town are eligible to become members, is devoid of substance and is liable for rejection. But the learned trial Judge, even after referring the Clause – 2 of the original byelaw in the judgment, has misinterpreted the same, as if it was referring to the Viswa Brahmana Community and arrived at the findings above referred.

29. The plaintiffs have mainly challenged another condition found in Clause – 10, which stipulates the eligibility for membership and is extracted hereunder:

“உறுப்பினராக சம்ப்பது என்பது நிர்வாகக் குழுவின் தீர்மானத்தைப் பொறுத்ததாகும்.”

Admission of membership is upto to the decision of the Executive Committee. It is pertinent to note that the plaintiffs have not challenged the condition found in Clause – 10 which stipulates that male members of 18 years of age and belonging to 5 sects of Viswa Brahmana Community



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who are the descendants of former members. Moreover, they have also not challenged Clause-2 of the original byelaw which stipulates that male members belonging to 5 sects attached to the Viswa Brahmana Mahajana Sangam and who are above 18 years of age alone are eligible to be the members of the Society.

30. At this juncture, it is necessary to refer Section 12 of the Tamil Nadu Societies Registration Act 1975, which is extracted hereunder:

“12. Amendment of memorandum and bye-laws:

(1) A registered society may, by special resolution, amend the provisions of its memorandum relating to the objects of the registered society so far as may be required to enable it

—
(a) to carry on the administration of the registered society more economically or more efficiently ; or

(b) to attain its main purpose by new or improved means ; or

(c) to amalgamate with any other registered society ;
or

(d) to divide itself into two or more societies.

(2) A registered society may, by special resolution, amend its bye-laws.



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(3) An amendment of the memorandum or the byelaws shall be registered and on such registration shall take effect from the date of the passing of such special resolution.

(4) If the Registrar is satisfied that any amendment of the memorandum or the bye-laws is not contrary to the provisions of this Act, or the rules made thereunder, he may register the amendment. When the Registrar registers an amendment of the memorandum or the bye-laws, he shall issue to the registered society a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered.”

31. Sub-section (1) of Section 12 says that the Society can amend the provisions of its memorandum even relating to the object of the Society, whereas sub-section (2) says that the Society can amend its byelaws. As rightly contended by the learned Counsel for the defendant, Section 12 of the said Act does not prohibit any amendment and more particularly permits the amendments, even relating to the object of the Society and its byelaws. Moreover, Ex.A.1 – original byelaws contain a specific clause that Sangam can change, amend or to frame fresh byelaws. But the only condition required is that the same has to be passed with 3/5 majority in a specially convened General Body Meeting. Clause -8 is extracted hereunder:



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“ஐ: சட்டத்தின் விதிகளை மாற்றுவாஇ திருத்துவாஇ புது விதிகள் ஏற்படுத்துவா அதற்கென்று ஏற்படும் ஐச: மகா சபையில் ஆஜர் மெம்பர்களில் 5ல் 3 ப்டுக்கு உமற்பட்ட மெஜாரடி முடிவின் உபரில் தீர்மானம் செய்யலாம்.”

32. It is evident from Ex.A.3 that in the General Body Meeting convened on 27.06.1998, a special resolution came to be passed for amending the byelaws and the same has been registered by the office of the District Registrar. Admittedly, it is pertinent to note that the plaintiffs have not questioned the Clause-8 of the original byelaws under Ex.A.1. As rightly contended by the learned Counsel for the defendant, the defendant Society, as per Section 12 of the Tamil Nadu Societies Registration Act and as per the Clause – 8 of the original byelaws, is having every right or authority to amend the byelaws and only on that basis, the impugned amendments came to be passed. Since the plaintiffs have not challenged the original byelaws and more particularly Clause-8 of the original bye-laws under Ex.A.1, they have no right or locus standi to question the amendments brought in 1998 and more particularly, the condition that the Executive Committee can alone take a decision with



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regard to the admission of any new member to the Sangam.

Consequently, this Court has no hesitation to hold that the impugned finding of the trial Court that the above said condition is invalid, is not in accordance with law and is liable to be set aside.

33. The plaintiffs have claimed the relief that they should be admitted as members of the Society. The defence of the defendant is that the plaintiffs have neither pleaded nor proved their eligibility as per the bye-laws of the Society and that therefore, their applications were rightly rejected. As rightly contended by the learned Counsel for the defendant, the plaintiffs have nowhere whispered as to how they have become eligible to be enrolled as members of the Society, except alleging that they are belonging to Palani Town Viswa Brahmana Community.

34. As already pointed out, the defendant Society has already denied / disputed the eligibility criteria canvassed by the plaintiffs. Admittedly, the plaintiffs have not claimed any declaratory relief that they are eligible to become the members of the defendant Society. As already pointed out, the trial Court only on the basis of its earlier finding with regard to the membership, has directed the defendant Society to



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admit the plaintiffs as its members. Since the plaintiffs have not established their eligibility as per the byelaws of the Society and in the absence of any prayer to declare their eligibility, the defendant Society cannot be directed to admit all the plaintiffs as its members.

35. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Supreme Court Bar Association and Others Vs. B.D.Kaushik*** reported in ***VII (2011) SLT 426***, wherein the Hon'ble Apex Court has specifically held that every citizen has a fundamental right to form an association, but no citizen has a fundamental right under Article 19(1)(c) of the Constitution of India to become the member of the Society, as his right is governed by the provision of statute.

36. In ***Supreme Court Bar Association and Others Vs. B.D.Kaushik***, the Hon'ble Supreme Court has also observed that in matters of internal management of an association, the courts normally do not interfere, leaving it open to the association and its members to frame a particular bye-law, rule or regulation which may provide for eligibility and or qualification for the membership and/or providing for limitations/restrictions on the exercise of any right by and as a member of



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the said association.

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37. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Zoroastrian Cooperative Housing Society Ltd., and another Vs. District Registrar, Cooperative Societies (Urban) and others*** reported in ***(2005)5 SCC 632*** and the relevant passage is extracted hereunder:

“30. if the relevant bye-law of a society places any restriction on a person getting admitted to a co-operative society, that bye-law would be operative against him and no person, or aspiring member, can be heard to say that he will not be bound by that law which prescribes a qualification for his membership.”

38. The plaintiffs have also claimed the relief for removal of the defendant from the responsibility of the Secretary of the defendant Society. It is pertinent to note that the plaintiffs have laid the suit only against the Society, but represented by its Secretary. Admittedly, the plaintiffs have not impleaded the Secretary whose removal was sought for. The trial Court, in the impugned judgment, has directed for the



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removal of the then Secretary Muthuvel @ Ramesh (D.W.1) from the post of the Secretary of the defendant Society.

39. As rightly contended by the learned Counsel for the defendant, the plaintiffs in their plaint, have nowhere whispered about the name of D.W.1, who was removed from the post of the Secretary by the impugned judgment. The plaintiffs have only raised allegations against the previous Secretary Rajasekar, who was examined as D.W.2. But there are absolutely no allegations or charges against D.W.1. The learned trial Judge, by observing that D.W.1 has not produced any records to show as to when election was conducted, as to who were elected for the office bearers, as to how new members were admitted and that he has also not produced any records to show the particulars of the tenants or the lessees, quantum of rent or lease amount and the income derived by the Society and by holding that the defendant has failed to prove that D.W.1 was elected as Secretary properly and was functioning correctly, directed for his removal from the post of Secretary.

40. It is not the case of the plaintiffs that pending suit, they have called for the records referred by the trial Court from D.W.1 and he has



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failed to produce the same. Since the plaintiffs have filed the suit and claimed the reliefs, it is for them to produce necessary evidence and prove their case and the defendant cannot be expected to disprove the case of the plaintiffs. Moreover, as rightly contended by the learned Counsel for the defendant, the documents referred by the trial Court are absolutely not necessary for deciding the issues involved in the suit. As already pointed out, since D.W.1 was not a party to the suit and that there was neither pleadings nor evidence to the alleged mismanagement and other charges against him, the finding of the trial Court directing for removal of D.W.1 from the post of Secretary, cannot be sustained at all. The learned trial Judge himself has observed that the plaintiffs though alleged that the executive committee was not maintaining the suit properties properly and that they were letting out / leasing out the suit propertie to known persons for lesser rent / lease amount, they have not produced any documents to show that the shops and marriage hall available in the suit properties were let out or leased out for lesser rent or lease amount.

41. The defendant in the written statement has taken a specific



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defence that the suit is bad for non-joinder of necessary parties. But the learned Counsel for the plaintiffs would submit that the defendant has nowhere stated in the written statement as to who were omitted to be added. But as rightly contended by the learned Counsel for the defendant, the plaintiffs, as already pointed out in their plaint, have raised so many allegations and charges against the former Secretary Rajasekaran who was examined as D.W.2 by the defendant side. But they have not chosen to implead him. As already pointed out, though the trial Court has ordered for the removal of the then Secretary - Muthuvel @ Ramesh, who was examined as D.W.1, he was also not impleaded in his individual capacity. The plaintiffs have not offered any reason or explanation for their non impleadment. Though the defendant has not specifically pleaded, taking note of the facts and circumstances, it can easily be inferred and more importantly they have raised charges against the former Secretary and the said removal of the then Secretary who was holding office at the time of filing of the suit. Considering the above, this Court has no hesitation to hold that the suit is bad for non-joinder of necessary parties.

42. As already pointed out, the plaintiffs in the plaint have alleged



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that the former Secretary of the defendant Society has indulged in mismanagement and misappropriation of the Society funds. It is their further complaint that all the executive members and office bearers were the close relatives of the Secretary and they were acting to the tunes of the Secretary and that the plaintiffs have complained about the high-handed and illegal acts of the Secretary and other office bearers to the police, revenue and to the District Registrar.

43. As rightly contended by the learned Counsel for the defendant, the allegations raised in the plaint are vague and bald. Moreover, the plaintiffs have not adduced any iota of evidence to substantiate those allegations. The plaintiffs have examined the fifth plaintiff alone as P.W.1. They have not chosen to examine any other person from their community or any other person acquainted with the alleged mal-functioning of the Society. The main contention of the plaintiffs is that the office of the District Registrar has sent a reply in response to their application under RTI, that the defendant has not submitted annual reports and auditor reports for so many years and the Society was lastly renewed on 31.03.2007.



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44. In order to counter the above, the defendant has summoned and examined the Sub-Registrar attached to the District Registrar Office (Administration) and through him, they have exhibited the Annual inspection reports and auditor reports for the period from 2008-2009 to 2012 – 2013 under Exs.X.1 to X.6. D.W.3 would admit that the above copies of the documents were issued by their office. He would admit that no one has preferred any complaint against the defendant Society and no action was taken against them. He would also submit that the defendant Society has submitted the documents required to be submitted till 2013. In further examination, he would say that the then Sub-Registrar had inspected the Society on 28.11.2008 and nobody has raised any objection with regard to the inspection report under Ex.X.1. As rightly contended by the learned Counsel for the defendant, the trial Court has specifically observed that the accounts of the defendant Society were audited properly and the same were sent to the District Registrar.

45. Admittedly, the plaintiffs have not challenged any particular election or the last election held, prior to the filing of the suit. They have not raised any pleadings nor produced any evidence to show that the last election was not conducted properly and as such, the same is liable to be



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cancelled. But the trial Court by making a general observation that the defendant has not produced any records to show that the executive members and the office bearers were elected properly, directed for conducting of proper election to the defendant Society.

46. The learned Counsel for the defendant has relied on the Full Bench judgment of this Court in ***C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee, Karisal through its Secretary Vs. The District Registrar Cheranmahadevi, Tirunelveli District and four others*** reported in ***2005-2-L.W.550***, wherein the Full Bench has specifically held that so long as the election is not declared invalid in the manner known to law, no direction for fresh election could be ordered and that validity of election could very well be decided only by the competent civil Court. As already pointed out, there is absolutely no pleadings or evidence to show that the last election conducted to the defendant Society was not proper and as such, the same has to be declared as invalid. Moreover, the learned trial Judge has also not given any finding that the last election to the defendant Society was not conducted in the manner known to law and as such, the same is invalid. Considering the above, the impugned direction for conducting election



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by the trial Court is not in accordance with law and the same is liable to be set aside.

47. No doubt, the learned trial Judge has given much importance to the comments made by the District Registrar, Palani with regard to the membership eligibility. As rightly pointed out by the learned Counsel for the defendant, in the Full Bench Judgment referred above, it has been held that the power of the Registrar to hold enquiry is only to arrive at the prima facie conclusion as to the correctness of the particulars in Form No.VII as per the provision of sub-section 9 of the Act.

48. A Division Bench of this Court in ***P.V.Kadiravan Vs. Kallar Kalvi Kazhagam, Usilampatti***, reported in ***2008(4) LW 748*** has observed that power of the Registrar under Section 34 to call for information or explanation is only incidental for maintaining correct records and the Registrar is not expected to conduct any enquiry except to call for additional information or explanation and that too, just for the purpose of filing it as annexure to the original document. Considering the above, the legal position is very clear that the Registrar is not entitled to adjudicate any dispute under Section 34 of the Act and therefore, the



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observation made by the District Registrar, Palani in Ex.A.14 cannot be sustained.

49. Now turning to the maintainability of the suit and the applicability of Section 92 C.P.C., no doubt the plaintiff in the petition filed under Section 92 C.P.C., sought permission to institute the suit in I.A.No.112 of 2010. The defendant has filed their counter statement raising objections and that the learned trial Judge, after enquiry, has passed an order permitting the plaintiffs to file the suit under Section 92 C.P.C. No doubt, as rightly contended by the learned Counsel for the defendant, the trial Court has specifically observed in the said order that the plaintiffs have shown a prima facie right to file the suit. No doubt, the defendant has not challenged the order passed in I.A.No.112 of 2010.

50. The Hon'ble Supreme Court in ***Swami Paramananda Saraswati and Others Vs. Ramji Tripathi and Others*** reported in ***AIR (1974) SC 2141***, relied on by the learned Counsel for the defendant, has held that if after evidence is taken, it is found that the breach of trust alleged has not been made out and that the prayer for direction of the court is vague and is not based on any solid foundation in fact or reason



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but is made only with a view to bringing the suit under the section, then suit purporting to be brought under section 92 must be dismissed.

51. In the case of *S.Guhan and Others Vs. Rukmini Devi Arundale and Others* reported in *1987(100) LW 187*, this Court has held that any decision arrived at in an order granting leave would not prevent the court while disposing of the suit or appeal to go into the merits of the case and that maintainability of the suit or appeal itself could be agitated.

52. Considering the above, it is very much clear that just because a petition under Section 92 C.P.C., was allowed and permitted the plaintiffs to institute the suit, it cannot be stated that the defendant cannot raise the maintainability of the suit on the ground that Section 92 has no application to that case.

53. Trust is an arrangement where the parties agree that one party will transfer his / her property to the other party who will hold the property for the benefit of another, whereas Society is a set of individuals who have come together for a common purpose. But Section 92 C.P.C., is meant for public trust alone. Generally the Court is accepted as the



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guardian of the Public Charitable Trust / Institution. The Courts have a general *parens patriae* jurisdiction over the trusts of charitable and religious nature and the Courts are bound to guard the interest of the trust, since it involves the question of public interest. A suit under Section 92 C.P.C., is a suit of special nature. The main purpose of Section 92 C.P.C., as per the decision of the Constitution Bench of the Hon'ble supreme Court in ***Chairman Madappa vs M. N. Mahanthadevaru and Others*** reported in ***1966 AIR 878***, is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. Moreover a suit filed under Section 92 C.P.C., is actually an enabling representative action, but without joining all beneficiaries.

54. The Hon'ble Supreme Court in ***Chairman Madappa's case***, above referred, while considering the scope of Section 92(1) C.P.C., has specifically observed that the said section provides for two class of cases, namely, (i) where there is a breach of trust in a trust created for public purposes of a charitable or religious nature, and (ii) where the direction of the court is deemed necessary for the administration of any such trust. In order to invoke Section 92 C.P.C., the following conditions have to be



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satisfied:

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(1) the suit related to a trust created for public purpose of a charitable or religious nature;

(2) it must be proceed on an allegation either of breach of trust or of the necessity of having directions from the Court for the administration of the trust;

(3) reliefs claimed must be one or other of the reliefs specified in the section;

Moreover, the suit must be one brought in a representative capacity in the interest of the public or of the trust itself and not for vindicating the private rights of the plaintiffs.

55. In the case on hand, admittedly, the defendant is not a Trust, but is a Society registered earlier under the Societies Registration Act, 1860 and subsequently under the Tamil Nadu Societies Registration Act, 1975. It is settled law that a suit with respect to the administrative matters of a Society, or property belongs to a Society is not controlled by Section 92 C.P.C. Moreoverver, there is no dedication of property



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belonging to a Society. Dedication of specified property by a competent person is essential for a valid endowments and it is a relinquishment of entire rights of donor or founder in the property dedicated. In the case on hand, as rightly pointed out by the learned Counsel for the defendant, the suit properties are owned by the Society. Moreover Section 92 C.P.C., does not specifically make any provision to remove the persons in management of the Society and to appoint new managing body.

56. No doubt, the Hon'ble Supreme Court in ***Swami Shivshankargiri Chella Swami and another Vs. Satya Gyan Niketan and another*** reported in ***(2017)4 SCC 771*** while considering where trust would arise when the donor gifted property to the Society registered under the Societies Registration Act 1860, for the development and publicity of the Hindi language, by observing that the above gift was for a lawful purpose i.e. a “trust” is an obligation annexed to the ownership of the property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another owner, has upheld the order of the District Judge, granting permission under Section 92 C.P.C. Thereafter, the Hon'ble Supreme Court has further observed that the allegations putforth could only be



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determined by way of evidence in a special suit under Section 92 C.P.C.

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57. In the case of *S.Guhan and Others* referred above, this Court has held that it has become obligatory to the respondent to show to the appellate Court that the properties belong to the trust which is distinct and different from the Society and that if it was shown that the properties of the defendant was owned by the Society, then the suit under Section 92 C.P.C., is not maintainable. It is settled law that if a Society that was functioning in a fully democratic fashion and there was no settlor, who had vested the property in the Society, leave could not be granted under Section 92 C.P.C.

58. Considering the above, this Court has no other option but to hold that Section 92 C.P.C., has no application to the case on hand and as such, the suit as framed is not maintainable.

59. Even assuming for arguments sake, that Section 92 C.P.C., is applicable to the case on hand, the plaintiffs have not shown the existence of the ingredients that are necessary to bring the action under Section 92 C.P.C. The learned trial Judge, without considering the above



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factual and legal aspects in proper perspective, by misinterpreting the byelaws of the Society and in the absence of necessary pleadings and evidence, has granted the reliefs as prayed for. If such suits are allowed in such a fashion, then no Society will run properly. Hence, this Court has no hesitation to hold that the impugned judgment and decree of the trial Court are liable to be set aside.

60. The learned Counsel for the appellant would submit that subsequent to the impugned judgment and decree, the plaintiffs have forcibly captured the office of the Society and by violating the stay order, they have conducted election and got themselves elected and playing with the affairs and funds of the Society. He would further submit that the meeting convened by them and the alleged election of their own office bearers are in total contravention to the settled legal position and the Byelaws of the Society and as such, the election of office bears is null and void. But according to the learned counsel for the plaintiffs, in pursuance of the decree and judgment of the trial Court, members were admitted, election was held and the new executive committee and office bearers have been running the Society properly, taking note of the



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interest and welfare of the community people.

61. In *Mottaiyandi Chettiyar and Others Vs. Saroja and others* reported in **(2017)1 MLJ 630**, this Court has specifically held that the appellate Court while exercising its appellate jurisdiction is entitled to take into consideration the subsequent events for the purpose of moulding the reliefs as envisages under Order 7 Rule 7 r/w Order 41 Rule 33 C.P.C.

62. A Constitution Bench of the Hon'ble Supreme Court in *Mohanlal Chunilal Kothari Vs. Tribhovan Haribhal Tamboli* reported in **AIR 1963 SC 358** has reiterated the duty of the appellate Court to decide the appeal having regard to the subsequent events or change of law.

63. Considering the above, the legal position is well settled that the subsequent events can be taken note of. It is not in dispute that immediately after passing of the impugned judgment and decree, the defendant has filed a petition seeking orders to stay the operation of the judgment and decree dated 24.09.2014 and the trial Court, after enquiry,



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has passed an order granting stay for the execution of decree dated 14.03.2014 for four weeks. It is also evident that the present appeal came to be filed in February 2015 and this Court has granted stay of the decree till the disposal of the appeal, vide order dated 06.10.2015. Since this Court has specifically held that the suit itself is not maintainable and the plaintiffs have no locus standi to challenge the affairs of the Society as they have not even shown their eligibility to become the members and consequently set aside the impugned judgment and decree and taking note of the subsequent events and developments, this Court is duty bound to restore the status quo ante ie., on the date of filing of the suit and the date of impugned judgment and decree. Considering the other facts and circumstances, this Court is of the view that the parties are to be directed to bear their own costs and the above points are answered accordingly.

64. In the result, the Appeal Suit is allowed and the impugned judgment and decree passed in O.S.No.30 of 2011 dated 24.09.2014 on the file of the Additional District Court, Dindigul, are set aside. *Status quo* as on the date of the judgment and decree of the trial Court is ordered to be restored within one month from the date of receipt of a copy of this Judgment. Consequently, the Civil Miscellaneous Petition in



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C.M.P.(MD)No.3173 of 2018 is dismissed and the connected
Miscellaneous Petition is closed. Both parties are directed to bear their
own costs.

09.01.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
SSL

To

1. The Additional District Court, Dindigul.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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