

Application No.5366 of 2014  
in  
C.S.No.477 of 2014

**K.RAVICHANDRABAABU.,J.**

This application is filed to reject the plaint. The 5<sup>th</sup> defendant in the suit is the applicant.

2. The grounds on which the rejection of the plaint is sought for is as follows:

On the date of filing of the suit, the 1<sup>st</sup> plaintiff was not legally an existing society and in the absence of the same, the suit filed on behalf of a defunct society is not maintainable. The plaintiffs have deliberately suppressed the above fact and have filed the present suit. Thus, the 1<sup>st</sup> plaintiff being a defunct society and legally not in existence, cannot maintain the suit.

3. A counter affidavit is filed on behalf of the plaintiffs wherein it is contended that no notice was received from the Registrar of Societies under Section 44(1) of the Tamil Nadu Societies Registration Act, 1975 before declaring the Society as defunct. It is further stated that this Court has granted leave to file the present suit under section 92 by considering all the

aspects and therefore, filing an application to reject the plaint is not maintainable.

4. Heard both sides.

5. Learned counsel for the plaintiffs submitted that the 1<sup>st</sup> defendant filed an application No.5217 of 2014 for revocation of the leave granted by this Court and by order dated 01.06.2015, the said application was dismissed. He further submitted that the very ground as raised in this application was raised in the above Application No.5217 of 2014 and this Court has rejected the said contention. He further submitted that as against the order passed by this Court dismissing the application seeking for revocation of the leave, O.S.A.No.195 of 2015 filed by the 1<sup>st</sup> defendant came to be dismissed as withdrawn on 29.09.2015. Therefore, it is contended by the learned counsel that the present application raising the very same ground, cannot be entertained.

6. Per contra, learned counsel for the applicant/ 5<sup>th</sup> defendant submitted that though the appeal was dismissed by the Division Bench, liberty was granted to raise the issues before this Court.

7. I have already extracted the grounds on which the present

application seeking for rejection of the plaint is filed. A perusal of the order passed by this Court in Application No.5217 of 2014 dated 1.6.2015 would show that one of the grounds raised therein is to the effect that the registration of the 1st plaintiff has not been renewed as per the Rules for the last so many years and as such the 1<sup>st</sup> plaintiff Association is not a registered association as on date and on that ground alone, the suit is liable to be dismissed.

8. This Court, after considering all the submissions made by the respective parties, by passing an elaborate order, rejected the application filed for revocation of leave. Though the said order was challenged before the Division Bench in O.S.A.No.195/2015, the appellant sought to withdraw the appeal later with liberty to raise all issues in the course of trial in the suit. Granting such liberty, the Original Side Appeal was dismissed on 29.09.2015. The order passed by the Division Bench is as follows:

“Learned counsel for the appellant has obtained instructions and seeks to withdraw the appeal with liberty to raise all issues in the course of trial in the suit.

Liberty granted.

Thus, the appeal stands dismissed as withdrawn. No costs.”

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9. Therefore, from the liberty granted by the Division bench, it is clear the present issue raised by the applicant/ 5<sup>th</sup> defendant has to be raised only during the course of trial and the same cannot be raised and agitated once again by filing application for rejection of the plaint. Therefore, I am of the view that the application seeking for rejection of the plaint cannot be maintained, more particularly, on the reason that the very same ground raised was already considered and rejected by this Court while disposing of Application No.5217 of 2014. As liberty was already granted to the defendants in the Original Side Appeal to raise all the issues during the course of trial in the suit, the 5<sup>th</sup> defendant is entitled to raise all the issues at the time of trial. Accordingly, the application is dismissed as not maintainable.

06.10.2015

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