

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22 - 12 - 2015

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Original Side Appeal No. 265 of 2015

1. M. James Paul Rajan
2. David Prasad ... Appellants
Vs.

1. The Church of Jehovah Shummah
(Regd. No. 54/1958)
Rep. by its Secretary H.V. Srinivasan
No. 4 Church Lane
Ritherdon Road
Veperiy, Chennai - 7
2. H.V. Srinivasan ... Respondents

Prayer:- Original Side Appeal filed under Order XXXVI Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 01.6.2015 made in A. No. 678 of 2014 in C.S. No. 626 of 2011.

For Appellants : Mr. M. Balasubramanian

For Respondents: Mr. Ravikumar Paul
for M/s Paul and Paul

JUDGMENT

(Delivered by PUSHPA SATHYANARAYANA, J.)

Aggrieved by the judgment dated 01.6.2015 passed by the learned single Judge dismissing Application No. 678 of 2014 in C.S. No. 626 of 2011 seeking appointment of interim Administrator, the plaintiffs 2 and 3 have preferred the instant Appeal.

2. Heard the learned counsel appearing for the parties and perused the records.

3. The appellants had filed the suit for framing of scheme for proper and efficient administration of the first defendant's Church and for other reliefs of removal of the second defendant, appointment of an interim Administrator, for accounting from the defendants 1 and 2 and directing the second defendant to surrender all the documents of title and properties acquired by him out of the funds of the first defendant Church.

4. The first defendant Church is a registered Society formed for the purpose of propagating Christianity and particularly, for propagating the Gospels and Christian teachings and doctrines through small established associate member Churches. Every worshipper and religious devotee is a member of the said Church. The main object of the said Society is to act as an agent for purchase of distribution of Bibles, Gospels, Tracts, books and other Christian literature and to print mainly magazines and devotional books on Christianity. The first defendant Society is also governed by its bye-laws. It is the grievance of the plaintiffs that there is no transparency in the maintenance of the membership list and the service activities. It is specifically alleged that the second defendant has purchased properties in the names of individuals of his choice with the funds of the first defendant. There are various complaints alleged against the defendants in the plaint and about the mal-administration of the first defendant Church. Hence, the suit for framing of a Scheme for better administration of the Church, has been filed.

5. In the application seeking appointment of interim administrator, it is alleged that the first defendant Church and the Churches attached to it are all mal-administered and the funds raised therein are illegally diverted by the second defendant. There are also no accounts that are scrutinized from the year 2007. It was further alleged that the second defendant had furnished false information about the income of the Church to the Income Tax Department. The first defendant also does not have the complete details about the immovable properties in its name and acquired in individual's names out of the funds of the Church. Hence, the prayer for appointment of interim administrator was made.

6. The said application was resisted by the first defendant represented by its Secretary challenging the maintainability of the same. Primarily, it was contended that the applicants were not the members of the said Society and there was no locus to maintain either the suit or the application.

7. It is also found that the plaintiff's 2 and 3 had filed a suit in O.S. No. 5311 of 2009 on the file of the City Civil Court for similar relief and also filed an application in I.A.

No. 15502 of 2009 for appointment of an Advocate Commissioner to finalize and update the list of membership and to conduct the election. The said application was dismissed by the IV Assistant Judge, City Civil Court, Chennai, by order dated 13.12.2010 and the revision filed against the same in C.R.P. (PD) No. 43 of 2011 was also dismissed by this Court. The purpose for appointment of Administrator is to verify the existing members and to fill up the vacancies of 90 members in accordance with the bye-laws. It is also observed by the learned Judge that removal of a person from the membership by the General Body based on bye-law No. 3(5) cannot be done by an Administrator as member can be removed when he loses fundamental faith as laid down in the Bible. It is specifically observed by the Judge that whether a person has got faith as laid down in the Bible cannot be decided by an Administrator as the same should be decided only by a majority of the committee members.

8. Insofar as the properties that were alleged to have been purchased in the names of individuals and not in the name of Church is concerned, it was submitted by the defendants that the properties were purchased only in the name of Church even from the year 1960. It was contended further on behalf of the first defendant Church that the funds were not transferred from the first defendant Church for the purpose of purchasing immovable properties. In this regard, the second defendant and two other members have filed separate affidavits giving the following undertaking:-

"(a) That all immovable properties purchased through sale deeds in which my name is reflected were purchased only in my capacity as an elder of the Church at Jehovah Shamma and only for the beneficial use of the respective congregations which had raised the money for the said purchase.

(b) That I or my legal heirs or successors-in-interest and others named in the sale deeds, have no personal right, title or interest in any of the said immovable properties purchased jointly as elders of the Church at Jehovah Shamma.

(c) That I or my legal heirs or successors-in-interest shall execute such documents as may be necessary to conform and clarify the title of the said properties as stated above, as and when necessary or called upon by the elders of the Church at Jehovah Shamma.

(d) That all the aforesaid immovable properties so purchased wherever situated, have been under the possession, control and management of the congregations which had raised the funds for purchase of the said properties.

(e) That no personal claim of any kind has been made against any of the said immovable properties by any of the elders of the Church at Jehovah Shamma or anyone acting through or on their behalf."

Based on the said undertaking, the application for appointment of interim Administrator was closed by the learned single Judge.

9. It is not in dispute that the persons who had given affidavits of undertaking are the members of the Church. It is stated that deponents of the affidavits have no right or title or interest in the immovable properties purchased jointly as the elders of the Church at Jehovah Shummah.

10. Learned counsel for the appellants submitted that the said affidavits do not enlist the details of the properties acquired in the name of the first defendant Church. Hence, the said undertaking is not sufficient for rejecting the plea of appointment of an Administrator.

11. A plain reading of the plaint also does not disclose the details of the properties alleged to have been purchased in the names of individuals by the defendants out of the funds of the Church. The affidavit filed in support of seeking appointment of Administrator also does not set out such details. The affidavits of undertaking given by the second defendant and two others cover the mal-administration alleged by the plaintiffs. The defendants have also not yet filed their written statement though the suit was filed in the year 2011. In the absence of any specific allegation of mal-administration against the defendants or the details of the immovable properties purchased in the name of the Church set out in the plaint, the undertaking given by the second defendant and the two others, is sufficient and no Administrator need be appointed for updating the list of membership as the same having faith as laid down in the Bible, cannot be decided by the Administrator. The learned single Judge has rightly dismissed the application and no interference is warranted.

The Original Side Appeal is, accordingly, dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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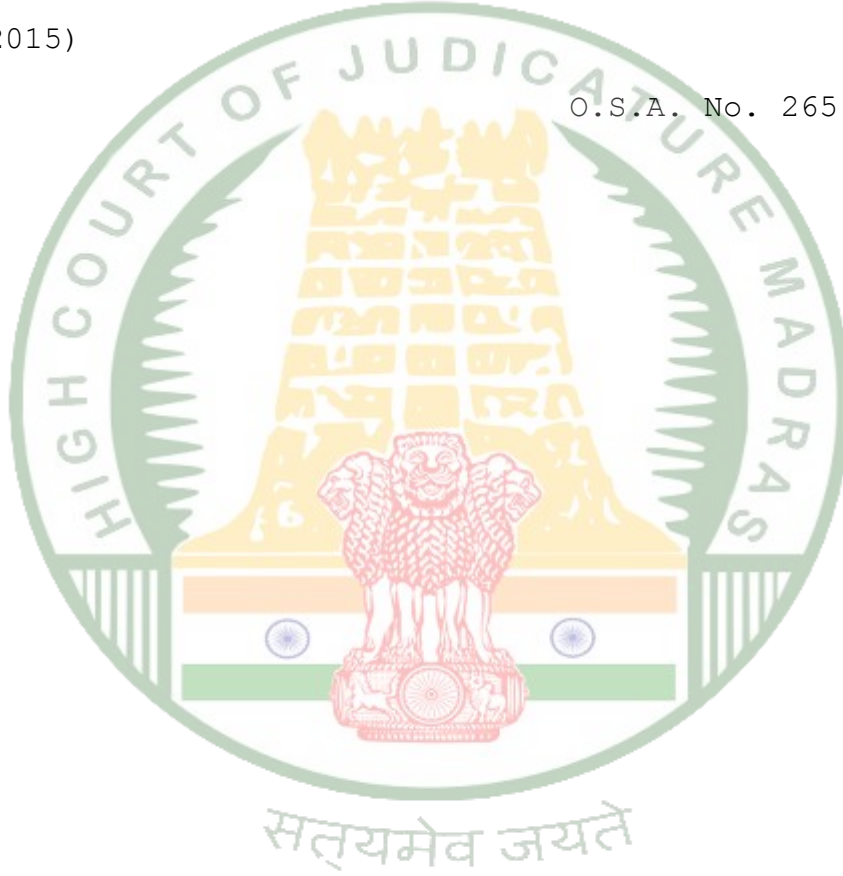
1. The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to M/s.Paul & Paul, Advocate, S.R.No.69388

+1cc to Mr.M. Balasubramanian, Advocate, S.R.No.69189

KJI (CO)
EU(12/01/2015)

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