

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE M.M.SUNDRESH

O.S.A.No.9 of 2016

1.M.Sekar
2.A.Venugopal

.. Appellants

versus

1.The Tamil Nadu State Council of the
Communist Party of India,
represented by its Secretary Mr.R.Mutharasan,
48, 10th Avenue, Ashok Nagar,
Chennai 600 083.

2.R.Mutharasan
Tamil Nadu State Secretary of the Communist Party of India,
48, 10th Avenue, Ashok Nagar,
Chennai 600 083.

3.D.Pandian
Member, Tamil Nadu State Council of the Communist Party of India,
119/2, Madura Flats, Anna Nagar West Extension,
Chennai 600 040.

4.The Communist Party of India,
represented by its General Secretary,
Ajay Bhavan, 15, Indirajit Gupta Marg,
New Delhi 110 002.

.. Respondents

Appeal filed under Order 36 Rule 9 of Original Side Rules
read with Clause 15 of the Letters Patent Act, against the order
dated 21.08.2015 passed in O.A.No.502 of 2015 in C.S.No.388 of
2015, on the file of this Court.

Original Application No.502 of 2015 is filed and the Judge's
Summons issued under Order 14 Rule 1 & 8 of the Original Side
Rules of this Court, read with Order 39 rules 1 and 2 of the
Code of Civil Procedure, to grant an ad-interim injunction
restraining the second respondent from functioning as the State
Secretary of the first respondent and from taking any decisions
in the said capacity pending disposal of the above suit.

Civil Suit No.388 of 2015 is numbered and the plaint is filed under Order 7 Rule 1 of the C.P.C. read with Order 4 Rule 1 of the Original Side Rules of this Court, praying to pass a judgment and decree:

(a) declare that the election of the Second defendant on 28.02.2015 as the State Secretary of the first defendant as ab initio void and is liable to be set aside and consequently declare that all acts done by the second defendant in the capacity of the State Secretary of the first defendant is ab initio void and non est and consequently pass an order of permanent injunction restraining the second defendant from in any way functioning as the Secretary of the first defendant.

(b) declare that the expulsion of the plaintiffs from the membership of the Communist party of India as evidenced from the statement of the second defendant in the newspaper "Jana Sakthi" is illegal and ab initio void:

(c) grant an order of permanent injunction restraining the defendants, their men, employees, agents, staff, subordinates and anybody acting on behalf of them from in any way preventing the plaintiffs from functioning as the members of the Communist party of India viz., the fourth defendant herein.

For Appellant .. Mr. Richardson Wilson
for M/s.P.Wilson Associates

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

The Membership of the appellant has already been restored by an interim order on account of the procedure not being followed by the respondents at the time of termination. This aspect being in favour of the appellant, we are not required to analyse it, especially in the context of the fact that the second respondent may have his own right of appeal.

2. As far as the election held is concerned, the learned Single Judge has rightly opined that at the stage of interim relief, the election cannot be set aside without a trial. The appellant was not even a contestant.

3. Learned counsel for the appellants submits that the second respondent pending trial, may do certain acts which may be prejudicial and that is the reason he sought interim relief. We are unable to persuade ourselves with the submission of the

learned counsel for the appellant except to the extent that if a suit is pending, the rule of lis pendens would always apply and thus the apprehension of the appellants may not be correct. It is always open to the court to mould the relief appropriately keeping in mind the prayer made in the plaint.

4. The Original Side Appeal accordingly stands dismissed with the aforesaid observations. No costs. Consequently, CMP.No.1295 of 2016 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.P.Wilson Associates, Advocate, S.R.No.7106

O.S.A.No.9 of 2016

tej (CO)
srg (18/02/2016)

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