

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

SA.No.454 of 2017 and
CMP.No.11368 of 2017

Salem Diocese Corporation,
Rep. by Rev. Father Mariasusai,
Secretary, Bishop's House,
Salem - 636 007 ...Appellant/Plaintiff

Vs.

1. Muthusamy
2. Manoharan
3. Jeevanandam
4. Karuppusamy
5. State Government of Tamil Nadu,
Rep. by District Collector,
Namakkal ...Respondents/Defendants

PRAYER:

The Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 28.07.2009 in AS.No.198 of 2008 on the file of the Subordinate Court, Tiruchengode, reversing the Judgment and Decree dated 10.11.2003 in O.S.No.300 of 1990 on the file of the District Munsif Court, Tiruchengode.

For Appellant : Mr.D.Shivakumaran

For Respondents: Mr.P.Valliappan
for R1 to R4

JUDGMENT

The appellant has filed a suit in O.S.No.300 of 1990 on the file of the District Munsif for declaration and permanent injunction. After considering the oral and documentary evidences, the aforesaid suit was decreed by the trial court. Challenging the said Judgment and Decree, the defendants 1 to 4 preferred an appeal in AS.No.198 of 2008 before the Sub Court, Tiruchengode. Pending the appeal suit, the defendants 1 to 4 has raised additional grounds that the suit filed by the

plaintiff is not maintainable and the said additional grounds has been framed as additional issues in the appeal. The Appellate court has considered the maintainability of the suit in detail whether the plaintiff has legal right to file a suit on behalf of the plaintiff society as per the Societies Act, wherein it has been stated that the Society may sue or be sued in the name of its Chairman. By considering the provisions under Section 20 of Act 27 of 1975 of Tamil Nadu Societies Registration Act, 1978 and also by considering the Article 2 of the bye-laws of the society, the competent person is the Chairman to file a suit on behalf of the society. Therefore the Appellate court has set aside the Judgment and Decree passed by the trial court and allowed the appeal. Challenging the aforesaid Judgment and Decree, the appellant has preferred the second appeal before this Court.

2. The learned counsel for the appellant would submit that the respondents have encroached upon the property of the society and only in the interest of the society, the appellant has filed the present suit. Without considering the nature of the suit and without going into the merits of the case, the Appellate court has erroneously allowed the appeal. Therefore, the appellant has filed the present Second appeal.

3. The learned counsel for the respondents 1 to 4 takes notice for the respondents 1 to 4 and would submit that the suit itself is not maintainable, in view of the bye-laws of the society and hence, the Second appeal is liable to be dismissed.

4. By considering the submissions of the learned counsel for the parties, on perusal of the questions of law involved in the present Second appeal, the Appellate court has considered the Section 20 of Act 27 of 1975 of Tamil Nadu Societies Registration Act 1978, wherein it has been stated clearly that the Society may sue or be sued in the name of its Chairman and by considering the evidence of PW1, the Appellate court has rightly come to the conclusion that the suit is not maintainable. Only on the representation capacity, the plaintiff has filed the suit and same is not maintainable. Hence, there is no error or illegality in the order passed by the Appellate court.

5. Now, the learned counsel for the appellant seeks liberty to file fresh suit.

6. In view of the above provisions of the Act and as per the bye-laws of the society, there is no question of law involved in the present Second appeal. Therefore, the Second appeal is dismissed. It is made clear that the dismissal of the Second appeal will not stand in the way of the Appellant Corporation to file a fresh suit in accordance with law. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

lok

To

- 1) The Subordinate Judge,
The Subordinate Court,
Tiruchengode.
 - 2) The District Munsif,
The District Munsif Court,
Tiruchengode.
 3. The Section Officer, VR Section, High Court, Madras.
- + 1 cc to Mr. P. Valliappan, Advocate SR.70736
+ 1 cc to Mr.D. Shivakumaran, Advocate SR.69691

SA.No.454 of 2017 and
CMP.No.11368 of 2017

KJI (CO)
EU(15/12/2017)

WEB COPY