

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2017
DATE OF DECISION : 27.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.Nos.369 and 370 of 2014

A.S.No.369 of 2014

- 1.S.Parthasarathy
- 2.V.Pandi
- 3.D.Dass
- 4.R.Ayyasamy
- 5.M.Sivakumaran
- 6.M.Arumugham
- 7.P.Ramasamy
- 8.Selvaraj
- 9.R.Nagendran

... Appellants/Defendants

Vs

1. The Coimbatore Periyar District
Dravida Panchalai Thozhilalar Munnetra Sangam
having its registered office at
No.69, Tatabad 3rd Street
Coimbatore
Rep. by its General Secretary
Mr.S.Duraisamy

2. S.Duraisamy
3. M.Thiyagarajan
4. R.Dharmalingam
5. K.Ramachandran
6. P.Gunasekaran
7. A.Palanisamy
8. G.Ganapathy
9. P.Govindasamy
- 10.M.Palanisamy
- 11.S.S.Kaliappan
- 12.V.Srinivasan

... Respondents/Plaintiffs

A.S.No.370 of 2014

- 1.V.Pandi
- 2.D.Dass
- 3.M.Sivakumaran
- 4.P.Ramasamy

... Appellants/Plaintiffs

-Versus-

1. M.Thiyagarajan
2. S.Duraisamy
3. A.Palanisamy
4. V.Srinivasan
5. P.Govindasamy
6. M.Palanisamy
7. S.S.Kaliappan
8. G.Ganapathy
9. B.Easwaran
- 10.R.Dharmalingam

... Respondents/Respondents

These appeals are filed under Section 96 of C.P.C. r/w Order 41 Rule 1 C.P.C. against the common judgment and decree dated 25.03.2014 passed in O.S.No.228 of 2010 and O.S.No.615 of 2010 respectively on the file of the First Additional District Judge, Coimbatore.

For Appellants : Sri.N.Jothi
for Mr.N.Manokaran

For Respondents : Mrs.Chithra Sampath
Senior Counsel for
Mr.T.S.Baskaran

COMMON JUDGEMENT

These appeals arise out of two suits namely, O.S.No.228 of 2010 and O.S.No.615 of 2010. O.S.No.615 of 2010 filed by the appellants in A.S.No.370 of 2014 seeking permanent injunction restraining the defendants from interfering with their functioning as President, Treasurer, Deputy General Secretary, Secretary and Vice President of the Trade Union called Kovai Periyar District Dravida Textile Mill workers' Progressive Sangam. Other suit in O.S.No.228 of 2010 was filed by the respondents in A.S.No.369 of 2014 seeking declaration that the elections said to have been held on 24.03.2010 are invalid, permanent injunction restraining the defendants from functioning as Office bearers of the said Trade Union, declaration that the 2nd plaintiff is the duly elected General Secretary of 1st plaintiff trade union, declaring 3rd plaintiff as the President and 12th plaintiff as the treasurer, permanent injunction restraining the defendants from amalgamating the assets of the 1st plaintiff Trade Union with other trade union or Sangam and also for mandatory injunction to hand over all the documents relating to the 1st plaintiff trade union.

2. Since both the suits relate to the validity of the elections said to have been held on 24.03.2010 for electing Office Bearers of the Kovai Periyar District Dravida Textile Mill Workers Progressive Union, both the suits were tried together and were disposed of by a common judgement by the Trial Court. The suit O.S.No.615 of 2010 was dismissed and the suit O.S.No.228 of 2010 was decreed.

3. Aggrieved by the same, the plaintiffs in O.S.No.615 of 2010 have preferred an appeal in A.S.No.370 of 2014 and the defendants in O.S.No.228 of 2010 have preferred an appeal in A.S.No.369 of 2014. The appeals were also heard together and are disposed of by this common judgement.

4. The plaint allegations in O.S.No.615 of 2010 are as follows:

The 1st plaintiff is the President, the 2nd plaintiff is the treasurer, the 3rd plaintiff is the Deputy General Secretary, 4th and 5th plaintiffs are Secretaries and 6th plaintiff is the Vice President of the Registered Trade Union called Kovai Periyar District Dravida Textile Mill Workers Progressive Sangam (Registration No.2658) having its Head Office at No.69, Tatabath Veethi, No.3, Coimbatore. According to the plaintiffs they were elected to the respective posts as stated above in a meeting of all the representatives of various branch Units of the Sangam in Coimbatore and Periyar District held on 24.03.2010. According to the plaintiffs, the said meeting was convened by the 2nd defendant, who happens to be the General Secretary, by notice dated 06.03.2010. As per the minutes of the meeting dated 24.03.2010, according to the plaintiffs, they have been elected to the respective posts.

5. The plaintiffs would further allege that in the said meeting, it was resolved that the Sangham should disassociate from the Central Body namely Marumalarchi Labourers Front and affiliate itself with another Central Organization called "Labourers Progressive Association Paravai". The 2nd defendant who had convened the meeting opposed such affiliation. Since the opposition was overruled by a majority of members, he along with his men namely, other defendants in the suit walked out of the meeting. It is claimed that after the second defendant chose to walk out along with his supporters, one Nagaraj, who is an employee of Murugan Mill, Coimbatore was appointed as Election Officer and elections were conducted in accordance with the bylaws of the trade union. It is claimed that since the defendants attempted to interfere with the functioning of the Office Bearers, after they having been duly elected, the plaintiffs had come forward with the present suit.

6. The suit was resisted by the defendants contending that no meeting was convened on 24.03.2010. The 2nd defendant namely, S.Duraisami, who was admittedly the General Secretary of the Trade Union bearing Registration No.2658 of 1959 had denied that he had convened the meeting on 24.03.2010. It was also contended that the suit itself has been filed at the instance of one S.Parthasarathi, who is the General Secretary of the rival trade union called, Coimbatore Erode District Dravida Panchalai Thozhilalar and Nirvaaga Uzhiyargal Munnetra Sangam having Registration No.1102. It was also claimed that the said S.Parthasarathy along with his men attempted to capture the office of the Kovai Periyar Dravida Panchalai Munnetra Sangam bearing Registration No.2658 of 1959, claiming themselves to be the Office Bearers having been duly elected on 25.12.1993. The suit filed by the S.Parthasarathy and his associates in O.S.No.2024 of 1994 on the file of District Munsif of Coimbatore came to be dismissed and the said decree was confirmed in appeal in A.S.Nos.96 and 97 of 2000 and the second appeal filed by the said S.Parthasarathy against the judgements in A.S.No.96 and 97 of 2000 are pending in this Court in S.A.Nos.1992 and 1993 of 2003.

7. It was also further claimed that even during the pendency of the suit before the Trial Court, an attempt was made by the said Parthasarathy to invoke Section 145 of the Criminal Procedure Code and to interfere with the affairs of the Trade Union bearing registration No.2658 of 1959. The proceedings that were commenced by the Sub Divisional Magistrate under Section 145 Cr.P.C. were quashed by this Court in Crl.R.C.No. 394 of 1997 and the said judgement of this Court was also confirmed by the Hon'ble Supreme Court. It is the further contention of the defendants that as per the bylaws of the Trade Union, the District representatives will have to be elected by the respective branches and it is only those District representatives would be entitled to elect of the office bearers of the trade union and convene its General Body meeting. According to the defendants, the election of the District representatives of the various branches of the Unit itself has not been completed and hence, there was no question of election being held on 24.03.2010.

8. It is also further pleaded that the term of the office bearers is for a period of two years and the office bearers who have been elected on 02.12.2008 have got a right to continue up to 02.12.2010 and the District representatives, who were elected prior to 02.12.2010 have no rights to elect the office bearers for the period from 2010 to 2012. The defendants also questioned the frame of the suit and claimed that the suit is not maintainable in the absence of the Trade union being made as a

party to the suit. Pending suit, the plaintiffs 5 and 6 have been transposed as defendants 9 and 10, since they had switched sides and disputed the elections said to have been held on 24.03.2010.

9. On the above pleadings, the learned Additional District Judge, Coimbatore framed the following issues:

- 1) Whether the plaintiffs are entitled to get the relief of injunction as prayed for?
- 2) Whether the plaintiffs were elected as office bearers of the Union on 24.03.2010 as claimed by the plaintiffs?
- 3) To what other relief the plaintiffs is entitled to?

O.S.No.228 of 2010

10. The trade union namely, the Coimbatore Periyar Districts Dravida Panchalai Thozhilalar Munnetra Sangam represented by its General Secretary Su.Duraisamiy and 12 others filed the suit in O.S.No.228 of 2010 seeking various reliefs as stated supra. The plaintiffs 1 to 4 in O.S.No.615 of 2010 were impleaded as defendants 2,3,5 and 7. Mr.S.Parthasarathy was impleaded as 1st defendant. Certain other individuals have been impleaded as defendants 4,6,8 and 9. The Gist of the plaint in O.S.No.228 of 2010 is as follows:

11. The 1st plaintiff namely, Coimbatore Periyar Districts Dravida Panchalai Thozhilalar Munnetra Sangam, a registered Trade Union bearing registration No.2658 of 1959 was started in 1958 and registered in the year 1959. The plaintiffs 2 to 12 claimed to have been elected as office bearers of the 1st plaintiff Trade Union in the elections that were held on 21.2.2008. As per the bylaws of the said Trade Union, the term of the office is for the period of two years i.e. up to 02.10.2012. The 1st plaintiff Trade Union consists of about 60 branch unions spread over the Districts of Periyar and Coimbatore with the total membership of 3500 textile workers. It is also claimed that the 2nd plaintiff has been functioning as Secretary of the 1st Plaintiff trade union for over 50 years.

12. The attempts made by the 1st defendant to take over the 1st plaintiff Trade Union during the year 1993 and the filing of the suit in O.S.No.2024 of 1994 and O.S.No.59 of 1994 as well as the appeals in A.S.Nos.96 and 97 of 2000 etc. were repeated in the plaint. After referring to the bylaws of the 1st plaintiff Trade Union, it was contended that the defendants namely S.Parthasarathy has been attempting to manipulate the records and somehow take over the 1st plaintiff Trade Union. It is also alleged that the 1st defendant is actually a General Secretary of the rival Trade Union called Coimbatore Erode District Dravida Panchalai Thozhilalar and Nirvaaga Uzhiyargal Munnetra Sangam

bearing registration No.1102. It was also contended that the signature contained in the notice dated 06.03.2010 is not that of the 2nd plaintiff and he never issued the same. It was also further claimed that the defendants 2 and 3 namely, Pandi and Dass were actually workers employees of the Union and they were never members of the 1st plaintiff Trade Union. Utilising their position as staff of the 1st plaintiff Trade Union, the 1st defendant won over them and maneuvered to create records as if a meeting was held on 24.03.2010 and the election was conducted. It was further alleged that no such election took place on 24.03.2010 and the claim of the defendants that they were elected as office bearers of the 1st plaintiff trade union in the meeting held on 24.03.2010 was stoutly denied.

13. It was further claimed that as per the bylaws of the Union, 60 branch units will have to elect their representatives. The number of such representatives depended on the number of workers employed in the branch unit. Upon the election of the representatives who are called District representatives (khtl;l gpujpepjpf;) they will have to elect office bearers of the parent body namely, the 1st plaintiff trade union. Such elected office bearers will hold the office for a period of two years. Claiming that elections of the District representatives itself has not been completed, the plaintiffs would contend that there was no election as claimed by the defendants on 24.03.2010 based on the documents produced in O.S.No.615 of 2010 which was originally filed as O.S.No.186 of 2010 on the file of the Sub Court, Coimbatore. It was contended that the signatures of at least 24 members have been forged in the minutes that has been produced as document in the other suit.

14. The suit O.S.No.228 of 2010 was filed in a representative capacity. The application in I.A.No.565 of 2010 was filed seeking permission to initiate the suit as representative suit under Order 1 Rule 8 CPC. The said application was allowed on 22.04.2010. It was claimed that the notice dated 06.03.2010 and the minutes dated 24.03.2010 were created by the 1st defendant namely, S.Parthasarathy with active connivance of defendants 2 and 3. According to the plaintiffs, they were employees of the Union. On the above allegations, the plaintiffs have sought for declaration that the election said to have been held on 24.03.2010, is illegal and not binding upon the plaintiffs and for other reliefs.

15. The suit was resisted by the defendants reiterating the allegations made in the plaint in O.S.No.615 of 2010. It was also claimed that the notice dated 06.03.2010 was in fact issued by the 2nd plaintiff in the said suit namely, S.Duraisamy. Since he walked out the meeting on 24.03.2010 and the other members present had appointed one Nagaraj an employee of Murugan Mill as the

election officer and the elections were held on the said date. They would also claim that the majority of the delegates present had participated in the elections. Therefore, the defendants sought for dismissal of the suit.

16. On the above pleadings, the learned Additional District Judge framed the following issues:

1. Whether the election held on 24.03.2010 is unlawful, invalid and illegal?
2. Whether the plaintiffs are duly elected Office Bearers of the 1st plaintiff Trade Union?
3. Whether the plaintiffs are entitled to seek mandatory injunction as sought for?
4. Whether the defendants are lawfully elected as Office Bearers of the 1st plaintiff on 24.03.2010?
5. To what other reliefs are the parties entitled to?

17. As already stated a joint trial was conducted and the evidence was recorded in O.S.No.228 of 2010. On the side of the plaintiffs, P.Ws.1 to 11 were examined and Exs.A1 to A40 were marked. On the side of the defendants DW1 to DW4 were examined and Exs.B1 to B7 were marked.

18. The learned Trial Judge upon a consideration of the oral and documentary evidence, concluded that the claim of the plaintiffs in O.S.No.615 of 2010 that elections were conducted on 24.03.2010 has not been established. Upon such a finding, the learned Trial Judge concluded that since there was no election on 24.03.2010, the plaintiffs in O.S.No.615 of 2010 are not entitled to the relief of injunction and dismissed the said suit. With reference to O.S.No.228 of 2010 learned Trial Judge concluded that in the absence of the election on 24.03.2010, the plaintiffs in O.S.No.228 of 2010 who were admittedly elected as office bearers of the 1st plaintiff trade union on 02.12.2008 are entitled to continue as Office Bearers, until the next election is duly conducted. Upon such finding, the learned Trial Judge decreed the suit in O.S.No.228 of 2010 as prayed for.

19. Though no issue was framed with reference to validity of the permission granted under order 1 Rule 8 of CPC, it appears certain arguments were advanced by the parties on the validity of the permission granted by the Court in I.A.No.565 of 2010 and the learned Trial Judge came to the conclusion that the contention of the defendants regarding the irregularities alleged in the grant of permission cannot be countenanced.

20. Aggrieved by the said judgement and decrees passed by the Trial Court, the plaintiffs in O.S.No.615 of 2010 and defendants in O.S.No.228 of 2010 have preferred the above

appeals in A.S.No.370 of 2014 and A.S.No.369 of 2014 respectively.

21. I have heard Sri.N.Jothi for Mr.N.Manokaran, learned counsel for the appellants in both the appeals and Mrs.Chithra Sampath, learned Senior Counsel appearing for the respondents in both the appeals. Sri.N.Jothi, learned counsel appearing for the appellants would submit that the suit in O.S.No.228 of 2010 is not properly constituted in inasmuch as all the office bearers who are said to have been elected on 24.03.2010 have not been made as parties to the said suit. He would further contend that the permission granted under order Order 1 Rule 8 is not in accordance with law. Pointing out the fact that all the persons who have filed objections pursuant to the publication made on 15.04.2016 have not been impleaded in the suit, he would contend that the very suit should have been dismissed. In support of his contention he had relied upon the judgements of this Court in Vellaigounder @ Kuppu & another v. Chinnasevi Gounder & others reported in 2014-5-L.W.56 and in Karuppa Gounder and others vs. Appavoo and three others reported in 2011 (1) L.W. 32, wherein it has been held that it is for the plaintiff to implead the objectors as parties to the suit.

22. Mr.Sri N.Jothi, would further contend that though the 2nd plaintiff in O.S.No.228 of 2010, Mr.S.Duraisamy had chosen to deny his signature in the notice dated 06.03.2010 which has been marked as Ex.B45, he had opposed the application filed by the appellants seeking to compare the signatures in the said document along with the admitted signatures of the said S.Duraisamy and that the application was dismissed by the Trial Court. It is also seen from the records that the dismissal of the same was confirmed by this Court as well as by the Hon'ble Supreme Court. Referring the prayer-A made in O.S.No.228 of 2010, wherein declaration is sought regarding election held on 24.03.2010 electing the defendants 1 to 8 as office bearers of the 1st plaintiff trade Union is ultra virus, without jurisdiction, illegal and not binding on the plaintiffs, the learned counsel would contend that there are as many as 33 Office bearers and a partial declaration cannot be granted. He would further point out that though 9th defendant was impleaded in the suit no prayer has been sought against his election. The learned counsel took me through the oral evidence to justify his claim that there was actually an election held on 24.03.2010 and the learned Trial Judge has erred in disbelieving the evidence on the side of the appellants.

23. Per contra, Mrs.Chitra Sampath, learned senior counsel appearing for the respondents would contend that there was no election held on 24.03.2010. The very notice dated 06.03.2010 and the minutes dated 24.03.2010 have been created by the 1st

defendant in O.S.No.228 of 2010 namely, S.Parthasarathy in collusion with the defendants 2 and 3 namely, Pandi and Dass who are employees of the Trade Union. She would also refer to the complaint lodged by Mr.T.Ramasamy who is the 7th defendant in O.S.No.228 of 2010 to the Inspector of Police Rathinapuri Police Station, wherein he has categorically stated that himself and 10 other new office bearers were elected on 24.03.2010. Pointing out that the minutes dated 24.03.2010 has been written in the new note book, she would contend that the same has been created.

24. She would further point out that the resolutions passed do not show the name of the proposers and seconders in respect of the Executive Committee members who were shown to be elected on 24.03.2010. The learned Senior counsel would submit that at least 12 of them were not even members of the 1st plaintiff trade union. She would further submit that some of the members, who were said to have present, have been examined as witnesses on the side of the plaintiffs and they have categorically denied their participation in such a meeting held on 24.03.2010.

25. Attacking Ex.B45, namely, the alleged notice said to have been issued by the 2nd defendant as Secretary of the Trade Union calling for a meeting on 24.03.2010, the learned Senior counsel would submit that what has been produced did not contain the name of the person to whom it has been addressed. Further according to her, non-production of the served copy of the notice dated 06.03.2010 would belie the case of the appellants. Pointing out that the Ex.A15 which is the notice dated 19.11.2008 issued by the said S.Duraisamy which contains the addresses of the recipient, the learned Senior counsel would contend that Ex.B45 dated 06.03.2010 is nothing but a creation of the appellants.

26. As regards the objections relating to non-joinder of necessary parties, the learned Senior counsel would contend that no such plea was taken before the Trial Court and the appellants are prohibited by Rule 13 Order 1 of CPC from raising such a plea in the appellate Court. Regarding the absence of the prayer as regards 9th appellant, the learned Senior counsel would contend that it is only a typographical error and the Trial Court has rightly held that such an error can be condoned and the relief could be granted.

27. The learned Senior counsel would take me through the records and point out that unless the conduct of election on 24.03.2010 is proved, plaintiffs in O.S.No.615 of 2010 cannot be favoured with the decree for injunction. Contending that the 1st defendant in O.S.No.228 of 2010, Mr.S.Parthasarathi, who is a member of the rival trade union namely Coimbatore Erode District Dravida Panchalai Thozhilalar and Nirvaaga Uzhiyargal Munnetra

Sangam, having registration No.1102, cannot claim himself to be the elected General Secretary of the 1st plaintiff in O.S.No.228 of 2010, which has a separate registration number namely 2658 of 1959. The learned counsel would invite my attention to Ex.A24 which is obtained under Right to information Act from the National Textile Corporation Limited, wherein it is shown that in the proceedings for settlement under Section 18(1) of the Industrial Disputes Act, the said S.Parthasarathi has represented the Kovai Erode Mavatta Dravida Panchalai Thozhilalar Nirvaka Uzhiyargal Munnetra Sangam (NPF) and Mr.M.Thiagarajan, is shown to have represented by the 1st plaintiff in O.S.No.228 of 2010 namely, Kovai Periyar Dravida Panchalai Thozhilalar Munnetra Sangam (MLF). The said meeting appears to have taken place in the year 2009. Contending that the present suit in O.S.No.615 of 2010 is nothing but an attempt by the said S.Parthasarathy who in fact belongs to a rival Trade Union to take over the affairs of the 1st plaintiff in O.S.No.228 of 2010, the learned Senior Counsel would submit that in the absence of proof of a valid election having been conducted, there cannot be a decree for injunction as prayed for.

28. Relying upon the documents produced, the learned Senior counsel would submit that at least 21 out of 33 persons who are said to have elected as Office Bearers in the election held on 24.03.2010 are shown to be members of the rival trade union having registration No.1102. According to the learned Senior counsel the claim that there was an election on 24.03.2010 and the persons shown in Ex.B46 were actually elected as Office bearers is nothing but false.

29. On the above rival contentions, the following points arise for determination in the appeals:

- 1) Whether there was a election on 24.03.2010 as claimed by the plaintiffs in OS.No.615 of 2010?
- 2) Whether the plaintiffs in O.S.No.615 of 2010 are entitled to a decree for permanent injunction as prayed for?
- 3) Whether the suit in O.S.No.228 of 2010 is bad for non-joinder of necessary parties?
- 4) Whether the non impleading of the objectors in I.A.No.565 of 2010 could be said to be fatal in the suit O.S.No.228 of 2010?
- 5) Whether the plaintiffs in O.S.No.228 of 2010 are entitled to the relief of declaration regarding the elections allegedly held on 24.03.2010?
- 6) Whether the suit is barred under any of the provision of the Trade Union Act?

30. Point No.1

In order to succeed in their suit in O.S.No.615 of 2010, the appellants in A.S.No.369 of 2014 should show that there was a valid election on 24.03.2010 as claimed by them. To prove the same, they rely upon Exs.B 45 and B46 namely, the notice allegedly issued by the 2nd plaintiff in O.S.No.228 of 2010 and the minutes said to have been drawn on 24.03.2010. On the other hand, the evidence that has been produced in the form of Exs.A20 and A22, A24 and A25 would show that there are two unions having deceptively in similar name. The 1st plaintiff in O.S.No.615 of 2010 is described as Kovai Periyar District Dravida Panchayalai Thozhilalar Munnetra Sangam having Registration Nos.2658 of 1969. From the records, it is seen that there is an another union described as Coimbatore Erode District Dravida Panchalai Thozhilalar and Nirvaaga Uzhiyargal Munnetra Sangam having registration No.1102. As per the minutes in Ex.B46, it is seen that 33 persons have been elected as Office Bearers in the election held on 24.03.2010. They are, a President, three Vice Presidents, a General Secretary, a Deputy General Secretary, four Secretaries, a Treasurer and 22 Executive Members.

31. The bylaws of the 1st plaintiff Union has been produced as Ex.A1. As per the said bylaws, any workman employed in a textile mill in Coimbatore and Periyar District who is not below the age of 15 years is eligible to become an Ordinary member of the union. Persons who are not actually employed in a Textile Mill may be admitted as honorary member for the purpose of serving in the Central Executive of the Union. The honorary members are required to be proposed by the representatives of not less than 10 mills and seconded by the representatives of not less than 10 mills. Bylaw 11 provides that the Central Executive Committee should consist of a President, three Vice President, General Secretary, a Deputy General Secretary, four Secretaries, a Treasurer and 22 representatives and it also prescribes that all these Office Bearers shall be elected from among the honorary members admitted and the delegate representing branches at the Annual General body meeting of the Union and they shall hold the office till next election.

32. As per bylaw 20, General body of the union shall be comprised of the members of the Central Executive Committee, honorary members admitted and delegates elected by branches. The number of delegates elected by the branches vary according to the number of members in each branch. It is also provided that the delegates so elected are entitled to represent the branches for the period of two years from the date of their election. From the above bylaws, it is clear that the Office Bearers of the Central Executive Committee should either be honourary member or the delegate representing the branch at the Annual General Body Meeting of the union. It is clear that an outsider or a member of rival union cannot be an Office Bearer of the 1st

plaintiff trade union.

33. Ex.B.46 shows that one V.Pandi was elected as a President who is the second defendant in O.S.No.228 of 2010. From Exs.A17 and A18, it is seen that he has been a paid employee of the Trade Union bearing Registration No.2658. There is nothing to show that he was either an honorary member or a delegate/branch representative as on 24.03.2010. One Dharmalingam is shown to be elected as one of the Vice Presidents. He is the 4th plaintiff in O.S.No.228 of 2010 and he claims that he never participated in the meeting dated 24.03.2010 and that his signature has been forged. Two other Vice Presidents namely, M.Selvaraj and R.Ayyasami are shown to be the Executive Committee member and Vice President respectively of the rival Trade Union bearing Registration No.1102. Mr.S.Parthasarathy, the 1st defendant in O.S.No.228 of 2010 is shown to be elected as a General Secretary. He is also shown to be the General Secretary of the rival Trade Union having registration No.1102 as per Exs.A20,A22,A24 and A25. One Sivakumaran who is shown to be elected as Deputy General Secretary is neither an honorary member nor a delegate. He has also not chosen to examine himself in the suit.

34. One Easwaran who is shown to be elected as a Secretary has been examined as PW3 and he has denied his signature in Ex.B46. M/s Easwaran, Nagendiran and Arumugam who are shown to be elected as Secretaries are also shown as the Secretaries of the Rival Trade Union bearing registration No.1102 under Ex.A20 and Ex.A22. The other person Ramasamy who has been elected as a Secretary is also not shown to be either a delegate or an honorary member. One Mr.Dass, who claims to have been elected as a Treasurer has been an employee of the Trade Union bearing registration No.2658 and there is no record to show that he was made an honorary member so that he could be elected as a treasurer of the Union. 22 Executive Committee members are claimed to have been elected as the Executive Committee members on 24.03.2010. 16 persons are shown to be the members of the rival Trade Union bearing registration No.1102 of 2000. Out of the remaining six persons, four persons have disputed their signatures in Ex.B46 and two other persons are not shown to be the members of the 1st plaintiff Trade Union bearing registration No.2658.

35. Apart from the above, a perusal of the minutes marked as Ex.B46 reveals several resolutions have been passed, but in none of the above resolutions, the name of the proposer or seconder is shown. As rightly pointed out by the learned Senior counsel appearing for the respondents, Ex.B.46 is written on a new book and it is claimed that old minute book was taken away by the 2nd plaintiff in O.S.No.228 of 2010 when he walked out of

the meeting. DW1 would in his evidence admit that no proceedings have been taken to recover the minute book from him. There is also nothing in evidence to show that the persons who have participated in the meeting dated 24.03.2010 have been validly elected as delegates by the concerned branch units or made as honorary members after complying with the requirements of the bylaws.

36. Yet another factor which militates against the claim of the appellants that there was a valid election on 24.03.2010 is that there is a finding in the earlier proceedings to the effect that Mr.S.Parthasarathy the 1st defendant in O.S.No.228 of 2010 has been shown to have been removed from the membership of the 1st plaintiff in O.S.No.228 of 2010 by a resolution of the General Council on 18.01.1994. This finding has been recorded in the earlier suit in O.S.No.69 of 1994. Of course, an appeal is pending against the said judgement in this court. However, Exs.A24 and A25 clearly demonstrate that the said S.Parthasarathy has been functioning as a General Secretary of Coimbatore Erode District Dravida Panchalai Thozhilalar and Nirvaaga Uzhiyargal Munnetra Sangam bearing registration No.1102 and he has been representing the said Union in the proceedings before the Deputy Commissioner, Labour in the year 2009. Therefore, unless it is shown that he was either an honorary member or a District representative/delegate validly elected by a branch Union, he cannot be elected as a General Secretary of the Kovai Periyar District Davida Panchalai Thozhilalar Munnetra Sangam having registration No.2658 of 1959.

37. The learned District Judge has adverted to the entire oral evidence on record and concluded that the plaintiffs in O.S.No.615 of 2010 have not established their claim that there was a valid election on 24.03.2010. The learned District Judge has also found that the Election Commissioner, who had conducted the election on 24.03.2010 has not been examined. It is also seen from the records that the then General Secretary of the 1st plaintiff in O.S.No.228 of 2010 namely, S.Duraisamy and the President namely M.Thiagarajan had staged a walk out. Therefore, it was incumbent upon the members present to elect a new President in order to proceed with the meeting. Though Ex.B46 has been produced, it does not contain any resolution to the effect that any one was nominated as a President to continue the meeting.

38. These circumstances, it strongly belie claim of the appellants that there was a valid election on 24.03.2010. Though Ex.B44 namely a list of addressees to whom letters have been sent by certificate of posting on 6.3.2010 has been produced, there is no evidence to support the claim that such notice was in fact sent to the 58 addressees. As already pointed out, not

even a single copy of the notice dated 6.3.2010 has been produced by the plaintiffs in O.S.No.615 of 2010.

39. Yet another factor which would militate against the claim of the plaintiffs in O.S.No.615 of 2010 is a complaint said to have been lodged by the 4th plaintiff Ramasamy on 25.03.2010, wherein, he had stated that he and 10 others new Office Bearers were elected on 24.03.2010. Ex.B46 would refer to the election of at least 33 persons. In the light of the above facts, I am unable to persuade myself to differ with the findings of the learned Trial Judge, wherein, he had concluded that there was no election held on 24.03.2010.

Point No.2

40. In the absence of proof of election, the plaintiffs in O.S.No.615 of 2010 cannot seek an injunction against the defendants who even according to them were office bearers as on 24.03.2010. The appellants admit that the office bearers will hold office till the conduct of the next election. Therefore, unless it is shown there was a valid election on 24.03.2010, the defendants in O.S.No.615 of 2010, who were admittedly Office bearers of the Trade Union having registration No.2658 are entitled to continue as Office bearers till the next election. Therefore, the plaintiffs are not entitled to a decree for permanent injunction as prayed for by them.

41. Last but not least, two of the plaintiffs namely, M.Easwaran and Dharmalingam, who are shown to have been elected as Secretary and Vice President in the election said to have been held on 24.03.2010, have not supported the case of the plaintiffs. Though they have been transposed, as defendants 9 and 10, on an application, they have taken a categorical stand that there was no such election and their signatures have been forged. They have also deposed as PW2 and PW3 and their evidence has not been discredited in any manner in cross-examination. This also shows that the claim of the plaintiffs regarding the election held on 24.03.2010 cannot be believed.

Point No.3

42. Mr. N. Jothi, learned counsel appearing for the appellants would vehemently contend that the Trial Court has erred in granting decree in O.S.No.228 of 2010 particularly with reference to the relief of declaration regarding validity of the election held on 24.03.2010 on the ground that though 33 persons are said to have been elected in the said election, only 9 of them have been made as parties and the relief of declaration has been sought only against the defendants 1 to 8. The learned counsel would vehemently contend that in the absence of other elected members, the Trial Court ought not to have decreed the suit.

43. The learned counsel would rely upon the proviso to Rule 9 Order 1 of CPC which provides an exemption the rule that no suit shall be defeated on the ground of mis-joinder or non-joinder of parties. Per contra, Mrs.Chithra Sampath, learned Senior Counsel appearing for the respondents would point out that the issue relating to non joinder was never raised before the Trial Court and no issue was in fact framed by the Trial Court on the question of non joinder. According to her in view of Rule 13 Order 1 of CPC, the objections should have been taken before the settlement of issues and in the absence of such objections, the same is deemed to have been waived. Rule 9 Order 1 of CPC reads as follows:

Rule 9 Order 1 of CPC reads as follows:

9. Mis-joinder and non-joinder.- No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party.

Rule 13 Order 1 of CPC reads as follows:

13. Objections as to non-joinder or mis-joinder.- All objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

44. In the written statement filed in O.S.No.228 of 2010, the issue relating to nonjoinder of other elected representatives has not been raised. The Trial Court has not framed any issues relating to nonjoinder of necessary parties. Rule 9 Order 1 of CPC prescribes that a suit shall not be defeated on the ground of misjoinder or nonjoinder of necessary parties. Of course, proviso makes an exception. It provides that nothing in Rule 9 would apply to the case of non-joinder of necessary parties. Rule 13 provides that if the objection relating to nonjoinder of necessary party or a proper party is not taken prior to the settlement of issues, the same shall be deemed to have been waived and the Court shall deal with the controversy between the parties who were present before it.

45. As already pointed out, objections on the ground of non-joinder of necessary parties has not been raised in the written statement and no issue has been framed to that effect.

However, in the suit in O.S.No.228 of 2010, which has been filed in the representative capacity, the application filed under Order 1 Rule 8 CPC has been allowed by the Court. It is not as if those persons who have not been impleaded were not aware of the proceedings. DW1 has specifically deposed that S.Parthasarathy and his men were present in Court even when he was examined. Nothing is prevented them from seeking to implead themselves in the suit. Therefore, in view of Rule 13 Order 1 CPC, I am unable to countenance the submission of the learned counsel appearing for the appellants that the suit O.S.No.228 of 2010 should be thrown out on the ground of non-joinder of parties.

Point No.4

46. Sri.N.Jothi, learned counsel appearing for the appellants would contend that non-impleading of objectors, who had filed their affidavits pursuant to the publication made in the application filed under Order 1 Rule 8 CPC, seeking permission of the Court to file the suit in a representative capacity, is fatal to the suit itself. In support of his contention the learned counsel would rely upon a judgement of this Court in Karuppa Gounder and another v. Appavoo and 3 others reported in 2011 (4) CTC 55 and in Vellaigounder @ Kuppu & another v. Chinnasevi Gounder & others reported in 2014-5-L.W.56. The learned counsel, drawing support to the above decisions of this Court, would submit that a duty is cast upon the plaintiffs who seek permission to file a suit in a representative capacity to implead the objectors. The non-impleading would result the suit being dismissed for non-compliance with the provisions under Order 1 Rule 8 of C.P.C. Sub Rules 1 to 3 of Order 1 Rule 8 CPC reads as follows:

"One person may sue or defend on behalf of all in same interest.-

(1) Where there are numerous persons having the same interest in one suit,-

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other

cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the court to be made a party to such suit.

47. I have gone through the objection that has been filed by the individuals opposing the application under Order 1 Rule 8 CPC. In none of the objection, the status or the right of the plaintiffs to represent the workers is disputed. In fact, all the affidavits are stereo type and they support the case of the defendants in O.S.No.228 of 2010. The learned District Judge had considered the objections and by a detailed order dated 22.04.2010 allowed the application, after rejecting the objections. The said order has become final. Neither the defendants in the suit nor the objectors had chosen to challenge the correctness of the said order. No doubt true, this court in Karuppa Gounder and another v. Appavoo and 3 others reported in 2011 (4) CTC 55 held that it is the duty of the plaintiffs to implead the objectors and the said decision was followed in Vellaigounder @ Kuppu & another v. Chinnasevi Gounder & others reported in 2014-5-L.W.56. It will be pertinent to point out at this juncture in both the above decisions, the order granting permission to sue in a representative capacity was challenged and this Court held that the objectors should be impleaded. In the case on hand the order granting permission was not challenged and the same has become final. The defendants in O.S.No.228 of 2010 did not raise any objection in their written statement, to the effect that non-impleading of the objectors is fatal to the suit and also no issue in fact was framed by the Trial Court touching upon the grant of permission under Order 1 Rule 8 of Code of Civil Procedure. Though the point was allowed to be argued before the Trial Court, the Trial Court has rejected the said contention after referring Sub Rule 3 Rule 8 of Order 1 of C.P.C. which enables the objectors to implead themselves in the suit. The objections of the learned counsel for the appellants, in my considered view, cannot be entertained at this stage. The party who has chosen to contest the suit without raising any objection cannot be allowed to nonsuit the plaintiffs on a technical ground after having chosen to participate in the proceedings.

48. Therefore I do not see any reason to countenance the submission of Sri.N.Jothi, the learned counsel appearing for the appellants on the ground that non-impleading of the objectors is fatal to the proceedings. In fact in Nilgiri District Janatha Party etc. v. A.Rahim and 3 others reported in 1996-2-L.W.456 this Court had held that even the failure to

obtain leave under Order 1 Rule 8 CPC is a procedural irregularity and as such, an application can be filed even in pending second appeal. In the light of the said pronouncement of this Court, I do not think that it will be in the interest of justice to nonsuit the plaintiffs in O.S.No.228 of 2010 on the ground that the objectors were not impleaded in the suit.

49. It will be useful to refer the judgement of the Division Bench of this Court in R.K.Chandramohan v. Elephant G.Rajendran & others reported in 2011-2-L.W. 776. The Division Bench in fact observed that even if the requirement under Order 1 Rule 8 are not strictly complied with, once it is shown that the persons, who are likely to be affected by the decree in such a suit, had sufficient notice to the suit, the objection to maintainability cannot be entertained at a later stage. In fact the Division Bench has held that the conduct of the objectors in not choosing to implead themselves in the suit despite their having knowledge of the suit would amount to waiver. In the light of the above pronouncement, the objections raised by the appellants to the maintainability of the suit also fails.

50. Lastly, Mr.N.Jothi, learned counsel appearing for the appellants would contend that the Registrar of Trade Union has power to decide the dispute relating to Trade Union and as such the Civil Court cannot adjudicate on those issues. Per contra, Mrs.Chithra Sampath, learned senior counsel appearing for the respondents would submit that there is no express or implied bar for the suit under the Trade Union Act. Taking me through the provisions of the Trade Union Act, the learned Senior Counsel would contend that the Registrar is not empowered to go into the rival claims regarding the election to the office bearers of a Trade Union. The Registrar has authority only to monitor the enlisting of members in a Trade Union. According to her, none of the provisions under the Trade Union Act 1926 invests upon the Registrar any quasi judicial power to decide a disputed question of fact. She would also point out that the appellants as plaintiffs in O.S.No.615 of 2010 having invoked the jurisdiction of the Civil Court cannot now turn around and contend that the civil court has no jurisdiction.

51. Mr.N.Jothi, however relied upon the judgement of the Hon'ble Supreme Court in North Eastern Railway Empoloyees vs. IIIrd Additional District Judge and others. From the report, I do not find that the issue relating to maintainability of the suit was either raised or gone by the Hon'ble Supreme Court. Sri.N.Jothi, the learned counsel appearing for the appellants would also seek to rely upon the judgment of Patna High Court in Mukund Ram Tanti v. S.Raza Registrar Trade Union, Patna and others reported in AIR 1962 Patna 348 wherein it was held that the Registrar of Trade Union can enquire about the legality of

election of new Officer Bearers of the Trade Union. But in the very same judgement the Division Bench had pointed out that the parties submitting to the jurisdiction of the Court and taking chance of getting favourable verdict cannot challenge the jurisdiction at a later point of time.

52. Mrs.Chithra Sampath learned Senior counsel appearing for the respondents would submit that this Court in Kovai Periyar Maavatta Dravida Panchalai Thozhilalar Munnetra Sangam vs. Commissioner of Labour (Registrar of Trade Union), Chennai and two others reported in 2003 (4) LLN 115 had held that the Registrar does not have any quasi judicial power to decide the dispute between the rival claims and the same can be decided only by a Civil Court and I am in entire agreement with the view taken by this Court in the said judgement. Therefore, the argument on the question of maintainability of the suit also fails.

53. Sri.N.Jothi, learned counsel appearing for the appellants would submit that the conduct of the second respondent in denying his signature in the notice dated 06.03.2010 and opposing the application for sending the said document for expert opinion should be taken note of. I have already found that there was no valid election on 24.03.2010. Therefore, the question whether the 2nd defendant S.Duraisamy sent the notice dated 06.03.2010 or not fades in to insignificance.

54. For the foregoing reasons, I do not find any ground to interfere with the judgement and decree of the Trial Court. Therefore, the appeals are dismissed confirming the judgement and decrees of the Trial Court.

55. Before parting with this Case, I should express my anguish on the conduct of the parties. Trade Unionism, a movement started for empowering the under privileged labourers has been taken over by the politicians and the parties to these appeals have been fighting to take control of the trade Unions atleast for nearly two decades now. I am sure that the main object, namely, the welfare of the workers of the textile industries, has been totally ignored by the Office Bearers, who claim themselves to be the labour leaders born to fight for the rights of the labourers. The Trade Union Act which is of the year 1926 does not contain any mechanism to prevent such abuse of the movement by the unscrupulous elements. It is high time, the workers should realise their rights and choose their representatives carefully so that the actual object of the Trade Union unionism is achieved.

56. Considering the facts and circumstances of the case, I do not make any orders as to costs in these appeals.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vk

To

The Additional District Judge,
Puducherry at Karaikal.

+2cc's to Mr.T.S.Baskaran, Advocate, S.R.No.44463

+2cc's to Mr.N.Manoharan, Advocate, S.R.Nos.44816 & 44815

+2cc's to Mr.T.S.Baskaran, Advocate, S.R.No.44464 (13.07.2017)

A.S.Nos.369 and 370 of 2014

CNR (CO)
CA(12/07/2017)



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