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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 2ND DAY OF JANUARY 2017

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

C.S. No.958 of 2016

and

O.A.Nos.1132 and 1133 of 2016

and

A.No.6746 of 2016

C.S.No.958 of 2016:

1. Sasikala Pushpa
Aged about 40 years,
W/o.T.Lingeshwara Thilagan,
R/o 135-137, North Avenue,
New Delhi 110001

2. T.Lingeshwara Thilagan,
Aged about 50 years,
S/o. Thiru. Neelakandan,
Soundarya Colony,
Anna Nagar,
Chennai

: Plaintiffs/Applicant

(in O.A.Nos.1132 and 1133 of 2016)

-Vs-

1. All India Anna Dravida Munnetra Kazhagam
represented by its office bearers
#226, Avvai Shanmugam Salai,
Royapettah,
Chennai 600014

2. Sasikala Natarajan,
aged about 60 years,
W/o. Natarajan,
Veda Nilayam,
81/36, Poes Garden,
Chennai 600 086

3.Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001

: Defendants/Respondents

(in O.A.Nos.1132 and 1133 of 2016)



Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree in favour of the Plaintiffs and as against the Defendants:-

i) permanent injunction restraining the 1st Defendant party in acting contrary to the Societies Registration Act by amending the rules and regulations unlawfully for the purpose of enabling the 2nd Defendant becoming general secretary.

ii) permanent injunction restraining the 1st Defendant from unlawfully and arbitrarily appointing the 2nd Defendant as General secretary.

Iii) awarding cost of the suit

O.A.No.1132 of 2016:

Original Application praying that this Hon'ble Court be pleased to grant ad-interim injunction restraining the 1st Respondent/1st Defendant from unlawfully and arbitrarily appointing the 2nd Respondent/2nd Defendant as General Secretary pending disposal of the above suit.

O.A.No.1133 of 2016:

Original Application praying that this Hon'ble Court be pleased to grant ad-interim injunction restraining the 1st Respondent/1st Defendant party in acting contrary to the Societies Registration Act by amending the rules and regulations unlawfully for the purpose of enabling the 2nd Respondent/2nd Defendant becoming general secretary.

A.No.6746 of 2016:

All India Anna Dravida Munnetra Kazhagam,
Duly represented by its Presidium Chairman,
E. Maniyanathan,
S/o.Seshaiya Naidu,



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Having office at,
#226, Avvai Shanmugam Salai,
Royapettah,
Chennai- 600 014

..Applicant/1st Defendant

vs

1.Sasikala Pushpa,
Aged about 40 years,
W/o.T.Lingeshwara Thilagan,
R/o.135-137, North Avenue,
New Delhi - 110001

..1st Respondent/1st

Plaintiff

2.T.Lingeshwara Thilagan,
Aged about 50 years
S/o.Thiru Neelakandan,
Souindarya Colony,
Anna Nagar,
Chennai

..2nd Respondent/2nd Plaintiff

3.Sasikala Natarjan,
Aged about 60 years,
W/o.Natarajan,
Veda Nilayam,
81/36, Poes Garden,
Chennai- 600 086

..3rd Respondent/2nd Defendant

4.Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi - 110001

..4th Respondent/3rd Defendant

(3rd & 4th Respondents are given up)

This suit along with this applications coming on this day before this court for hearing the court made the following order:

The first defendant in C.S.No.958 of 2016 has filed this Application to reject the plaint.



Application are as follows:-

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The respondents 1 and 2, as plaintiffs have instituted the suit against the applicant and respondents 3 and 4 for permanent injunction, restraining the first defendant party in acting contrary to the Societies Registration Act, by amending the Rules and Regulations unlawfully for the purpose of enabling the second defendant becoming general secretary and for permanent injunction restraining the first defendant from unlawfully and arbitrarily appointing the second defendant as general secretary.

3. The plaintiffs would claim that they are primary members of the first defendant party since 1996. The first plaintiff was expelled from the party on 01.08.2016, but the expulsion was not communicated to her nor to the Secretary, Rajya Sabha. The second plaintiff is the husband of the first plaintiff and as a better half, he is helping the first plaintiff in pursuing her political life. The first defendant party was founded by one M.G.Ramachandran in the year 1972 and he was the general secretary till his demise on 24.12.1987. After his death, J.Jayalalithaa held that office till her death on 05.12.2016.



4. It has been averred that when the Late J.Jayalalithaa was functioning as a Propaganda Secretary of the first defendant, the second defendant became friend of J.Jayalalithaa in the year 1982 and the second defendant even moved to her house in Poes Garden area of Chennai. It is alleged that on 19.12.2011, the second defendant along with 11 of her relatives were expelled from AIADMK party and the second defendant was admitted back into the party only on 31.03.2012, accepting her statement and also apology letter that she would not eye for even a councilor post in the party.

5. The plaintiffs have further alleged that from the inception of former Chief Minister J.Jayalalithaa's hospitalization on 21.09.2016, no one was allowed to know the status of her health, including the Governor of Tamil Nadu and on 05.12.2016, the former Chief Minister was declared as dead. When the whole world was still mourning the death of former Chief Minister, the family members of the second defendant at her instigation are making hectic attempts to make the second defendant as general secretary of the first defendant party against the first defendant constitution. The second defendant has also made the Chief Minister of Tamil Nadu and other Council



7. The first defendant has filed the application to
<https://hcservices.ecourts.gov.in/hcservices/>
 reject the plaint refuting the allegations made in the



plaint and also contending that there is no real cause of action for filing the suit, nor being instituted by a person having locus. All the plaint documents are xerox copies and none of which satisfies the requirements of Order VII Rule 14 of Civil Procedure Code. The suit came to be filed vexatiously with an oblique motive out of political vendetta without any valid cause of action, but on imaginary allegations and based on electronic media and print media publications and therefore, the plaint is to be rejected in terms of Order VII Rule 11 of Civil Procedure Code, besides being abuse of process of law.

8. The application is resisted by the plaintiffs by stating that there was no grounds for rejection of plaint and it has to be dismissed.

9. Heard Mr.R.Krishnamurthy, learned Senior Counsel, representing Mr.S.Senthil, learned counsel for the applicant and Mr.K.M.Vijayan, learned Senior Counsel for the first respondent; Mr.V.Prakash, learned Senior Counsel for the second respondent and Mr.R.Muthkumarasamy, learned Senior Counsel for the third respondent and perused the materials available on record.

10. Mr.R.Krishnamurthy, learned Senior Counsel for



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already expelled from the first defendant party and her expulsion was not challenged till today and the second plaintiff has not claimed any independent right and even in the plaint, it is stated that he is the husband of the first plaintiff and as a better half, he is helping the first plaintiff's political carrier. Therefore, they have no locus standi to institute the suit. It is further contended that the first defendant is not registered under the Societies Registration Act, so, the provisions of the Act would not apply to the case on hand, so the first prayer in the suit would go and that the first defendant has not declared election schedule, but the suit has been filed on imaginary allegations and based on surmises and conjunctures. Though the plaintiffs filed the suit alleging that they are the members of the first defendant party, they have not even produced the original membership cards and they have also relied on inadmissible documentary evidence of publication of electronic media and print media and the entire plaint is silent about non-production of original documents as mandated under Order VII Rule 14 of Civil Procedure Code.

11. The learned Senior Counsel for the applicant would further submit that the suit has been filed with



conjectures with an ulterior motive of having political gain. Since there is no cause of action and the alleged cause of actions are illusions and the suit has been filed by abusing the process of law, the plaint is to be rejected. The learned Senior Counsel has relied upon the following judgments in support of his contentions reported in **(2012) 8 SCC 706 [CHURCH OF CHRIST CHARITABLE TRUST & EDUCATIONAL CHARITABLE SOCIETY v. PONNIAMMAN EDUCATIONAL TRUST]**, **1998 (III) CTC 165 [Nesammal v. Edward]**, **AIR 1988 SC 1274 [Laxmi Raj Shetty v. State of Tamil Nadu]** and **(1993) 3 SCC 151 [S.A.KHAN v. CH.BHAJAN LAL]**.

12. Per contra, Mr.K.M.Vijayan, learned Senior Counsel for the respondents / plaintiffs would submit that the applicants have not made out any grounds to reject the plaint under Order VII Rule 11 of Civil Procedure Code. Since the entire reading of the plaint would disclose the cause of action, the plaint cannot be rejected on any other ground. It is further submitted that while considering the application filed under Order VII Rule 11 of CPC, the averments made in the plaint alone have to be scrutinized by the Court and the defense taken by the applicant cannot be considered at this stage and in support of his submissions, he relied



13. Mr.V.Prakash, learned Senior Counsel for the second plaintiff would submit that the second plaintiff is a member of the first defendant, hence he has independent right to maintain the suit. Further, the expulsion of the first plaintiff was not communicated to her and therefore, as per the decision of the Hon'ble Supreme Court reported in **(2016) 1 SCC 622 [DULU DEVI V. STATE OF ASSAM]**, she should be considered as a member of the first defendant party. It is further urged that whether the plaintiffs are members of the party and they have locus to file the suit can be decided only after trial and at this juncture, the Court has to scrutinize whether, there is a cause of action for institution of the suit. It is further submitted that as per Rules 20 and 43 of the AIADMK Rules and Regulations, the general secretary shall be elected by the primary members of party units of Tamil Nadu and other members of other States and that Rule being the basic structure of the party cannot be changed or amended. But, in contravention of the Rules, now attempts are being made by the second defendant to be elected as general secretary of the party, who does not have requisite qualification.



14. In the case of **Dulu Devi** (referred *supra*), the appellant in that case was appointed as an Assistant Teacher in a Primary School in 1976. Due to non-payment of salary, a Writ Petition was filed and the Authorities were directed to pay the salary and it was complied with. However, in a subsequent Writ Petition, a stand was taken that she was already terminated from service. The Court having found the order of termination was kept in file without communicating to the appellant, held that it would not be treated as an order terminating service, nor shall the said order be deemed to have been communicated. There is no quarrel with regard to the above proposition of law.

15. The issue arises for consideration in this Application as to whether, the plaint is to be rejected on the grounds of non-disclosure of a cause of action and abuse of process of law.

16. Similar issue came up for consideration before the Hon'ble Supreme Court. In (1977) 4 SCC 467, **Justice Krishna Iyer** has observed that if the allegations are vexatious, merit less and do not disclose a clear right and if clever drafting has created the illusions of cause of action, the suit should be nipped in the bud. The



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"It is dangerous to be too good."

17. In **1986 (Supp) SCC 315 [AZHAR HUSSAIN v. RAJIV**

GANDHI], the Hon'ble Apex Court has held as follows:-

"12. Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocle need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious



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parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent Court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties."

18. In the case of **Lakshmanan Chetty v. Lakshmanam**



Chettiar and others [AIR 1915 Madras 483],

Mr. Venkataraman is Harihar Bakhsh Singh v. Jagannath Sing

[AIR 1924 Oudh 413] and Mr. Venkataraman is Radhakishen v.

Wali Md. [AIR 1956 Hyd. 133] their Lordships have held

that the provisions of Order VII Rule 11 are not exhaustive, but only illustrations and the Court got

inherent power to see the vexatious litigations are not

allowed to take or consume the time of the Court. This

Court following the decisions cited supra, in **1998 (III)**

CTC 165 [Nesammal V. Edward] rejected the plaint on the

ground of abuse of process of law. In the light of the

decisions of the Hon'ble Supreme Court and this Court,

above referred, the contention of the learned Senior

Counsel that the plaint cannot be rejected on other

grounds cannot be countenanced.

19. It is settled law that while considering the

application filed under Order VII Rule 11, the Court has

to look into the averments in the plaint and the power

can be exercised by the trial Court at any stage of the

suit and the defence taken by the defendants are wholly

irrelevant. In **(2007) 15 SCC 52 [JAGESHWARI DEVI AND**

OTHERS v. SHATRUGHAN RAM], in that case, the plaint was

sought to be rejected on the ground of non-disclosure of

cause of action. The Hon'ble Apex Court, after perusing

the averments made in the plaint came to the conclusion



"12. A cause of action means every fact, which, it traverse d, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on in these services



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but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

21. In **(2012) 8 SCC 706 [CHURCH OF CHRIST CHARITABLE TRUST & EDUCATIONAL CHARITABLE SOCIETY v. PONNIAMMAN EDUCATIONAL TRUST]**, it has been held as follows:-

"13. While scrutinizing the plaintiff averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."



22. It is not in dispute that the suit has been instituted based on the xerox copies of the documents. Though the plaintiffs have claimed that they are the permanent members of the first defendant political party, they have not produced their original membership cards. In the plaint, nothing has been stated for non-production of original membership cards. It is further seen that the plaintiffs have relied upon the statements from the print media and electronic media in support of their contention. Perusal of the media reports would reveal that they are opinions and speculations of the reporters and they are not based on any materials. The Hon'ble Supreme Court in **AIR 1988 SC 1274 [Laxmi Raj Shetty v. State of Tamil Nadu]** and **(1993) 3 SCC 151 [S.A.KHAN v. CH.BHAJAN LAL]** have held that newspaper report is in the nature of hearsay evidence and that cannot be relied on, unless proved by evidence.

23. In **(2012) 8 SCC 706 [CHURCH OF CHRIST CHARITABLE TRUST & EDUCATIONAL CHARITABLE SOCIETY v. PONNIAMMAN EDUCATIONAL TRUST]**, in a suit for specific performance of contract, the plaintiff based his claim on a Power of Attorney, but it was not produced. The trial Court rejected the plaint under Order VII Rule 11. While confirming the order, the Hon'ble Supreme Court has held



as follows:-

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"17. In the case on hand, the respondent-plaintiff to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order VII Rule 14(2).

18. In the light of the controversy, we have gone through all the averments in the plaint. In paragraph 4 of the plaint, it is



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alleged that the 2nd defendant as agreement holder of the 1st defendant and also as the registered power of attorney holder of the 1st defendant executed the agreement of sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as "agreement holder". We are satisfied that neither the documents were filed along with the plaint nor the terms thereof have been set out in the plaint. The abovementioned two documents were to be treated as part of the plaint as being the part of the cause of action. It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in U.S. Sasidharan vs. K. Karunakaran and Another (1989) 4 SCC 482 and Manohar Joshi vs. Nitin Bhaurao Patil and Another (1996) 1 SCC 169.

In the considered opinion of this Court, the judgment squarely applies to the case on hand.

24. According to the applicant, the first defendant is registered under the Representation of the People Act and not under the Societies Registration Act and therefore, the provisions of the Act have no application to the first defendant. It is seen that the suit is



filed on the premises that the first defendant is registered under the Societies Registration Act. Hence, they prayed for permanent injunction restraining the first defendant in acting contrary to the Societies Registration Act, by amending the Rules and Regulations to enable the second defendant to become the general secretary. In the present Application, it is specifically stated that the first defendant is not governed by the Societies Registration Act. Mr.R.Krishnamurthy, learned Senior Counsel for the applicant have also contended that the first defendant is not registered under the Societies Registration Act and therefore, the first prayer sought for in the suit is liable to be rejected.

25. In reply, Mr.K.M.Vijayan, learned Senior Counsel for the respondents would submit that as the Societies Registration Act is not applicable, it can be taken as the first defendant shall not amend the by-laws, contrary to the Representation of People Act. I am not able to accept the argument of the learned Senior Counsel for the respondents. It is settled law that without amendment of the plaint by filing an application, the statement made across the bar cannot be relied upon to



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26. With regard to second prayer, I have gone through the entire averments in the plaint, besides being the allegations are bald and vague, they are not supported by materials. The plaintiffs have not set out their case in clear terms. The plaint does not disclose any cause of action for filing the suit. When the suit was instituted, admittedly, the first defendant has not announced Election Schedule. Taking into consideration above facts, I am of the considered opinion that this is a speculative suit and in the light of the decisions in **(1977) 4 SCC 467, 1986 (Supp) SCC 315, 1998 (III) CTC 165 and (2012) 8 SCC 706**, the plaint is to be rejected.

27. In view of my above findings, the Application in A.No.6746 of 2016 in C.S.No.958 of 2016 is allowed and the plaint in C.S.No.958 of 2016 is struck off. In view of the order passed in Application in A.No.6746 of 2016, the Original Applications in O.A.Nos.1132 and 1133 of 2016 in C.S.No.958 of 2016 shall stand closed.

Sd/ M.K.K.S.J

02.01.2017

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Dated this the day of 2017

R.s/01.02.2017

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