



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

CMSA.(MD)No.53 of 2016

and

C.M.P (MD) Nos.12334 & 12335 of 2016

and

C.M.P (MD) No.2469 of 2017

1.Muthulaxmi @ Muthaparanam

2.Lal Bahadur Kennedy : Appellants/Respondents/
Petitioners/Plaintiffs

Vs.

1.Gnana Sironmoni

2.Manonmani

3.James Thiagarajan : Respondents/Appellants/
Respondents/Defendants

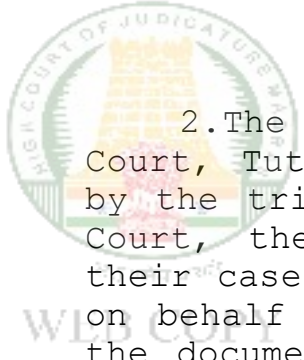
Appeal filed under Order 31 Rule 1 & 2 r/w Under Section 100 of Civil Procedure Code, against the order, dated 21.09.2016 made in C.M.A.No.5 of 2016, on the file of the Subordinate Judge, Tuticorin, reversing the order, dated 16.06.2015 made in I.A.No.488 of 2015 in O.S.No.86 of 2015, on the file of the District Munsif Court, Kovilpatti.

For Appellants : Mr.S.Rajasekar

For Respondents : Mr.S.Kadarkarai

JUDGMENT

The appellants are the plaintiffs in O.S.No.86 of 2015 on the file of the District Munsif Court, Kovilpatti. They filed the suit for declaration to declare the resolution as null and void and for injunction. The appellants also filed I.A.No.488 of 2015 on the file of the District Munsif Court, Kovilpatti for injunction restraining the respondents from functioning as the members of the first defendant's Association. After contest, the trial Court has granted injunction, by the order, dated 16.06.2015.



2.The respondents filed C.M.A.No.5 of 2016 before the Sub Court, Tuticorin challenging the order of the injunction granted by the trial Court, dated 16.06.2015. Before the first appellate Court, the respondents filed certain documents to substantiate their case. The first appellate Court after hearing the arguments on behalf of the appellants and the respondents and considering the documents filed by the respondents held that the respondents have prima facie proved that appellants have been removed from the partnership of the first defendant's Association with effect from 17.04.2013 and the same was communicated to the appellants. In view of the said finding, the first appellate Court, by the judgment and decree dated 21.09.2016 allowed the C.M.A.No.5 of 2016 and dismissed the application for injunction in I.A.No.488 of 2015.

3.Against the order of dismissal made in I.A.No.488 of 2015, dated 21.09.2016, the appellants have filed the present Civil Miscellaneous Second Appeal.

4.The learned counsel appearing for the appellants contended that the first appellate Court failed to follow the procedure contemplated Under Order 43 Rule 1 of Civil Procedure Code while permitting the respondents to file the documents in the appeal. The first appellate Court is not correct in holding that the appellants were removed from the partnership of the first defendant's Association as per the Bye-Laws on 17.04.2013 and the same was communicated to them. The first appellate Court ought to have seen that only in the year 2015, the appellants came to know about the removal and immediately, they filed suit and application for injunction.

5.The learned Trial Judge considering all the materials in proper perspective and granted interim injunction and the reasons given by the first appellate Court for allowing the Civil Miscellaneous Appeal and dismissing the injunction, are not valid.

6.Per contra, the learned counsel for the respondents submitted that by Resolution, dated 17.04.2013 appellants were removed from the members of first defendant's Association with effect from 17.04.2013 and the same was communicated and the appellants also accepted the same. The appellants did not initiate any legal proceedings immediately. After two years, they filed the present suit. The respondents are running number of Schools. The injunction granted by the Trial Court has caused considerable hardship to the first respondent in running the Schools. The respondents have proved prima facie case for not granting injunction and balance of convenience is in their favour.

<https://hcservices.ecourts.gov.in/hcservices/> heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents and perused all the materials available on record.



8.Both the counsel for the parties made elaborate arguments on the above points. It is seen that any order passed based on the above submission will have bearing on the result in the suit. The contentions of the counsel for the appellants and the respondents can be decided only in the main suit after conclusion of trial by considering oral and documentary evidence.

9.In view of the same, without deciding the issue on merits, the Civil Miscellaneous Second Appeal is disposed of by directing the District Munsif Court, Kovilpatti to dispose the suit as expeditiously as possible, in any event not later than, July, 2017. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(Co)

/True Copy/

Sub-Assistant Registrar

To

1.The Sub Judge,
Tuticorin.

2.The District Munsif ,
Kovilpatti.

+1 CC TO MR.S.KADARKARAI,ADVOCATE,SR NO.16433

+1 CC TO MR.T.LAJAPATHIROY,ADVOCATE,SR NO.16557

Am

MAS/SV-MMS/SAR2:11.04.2017:3P-5C

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21.03.2017