



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.06.2017

Pronounced on : 06.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P (PD) (MD) Nos.1025 & 1026 of 2017

and

C.M.P (MD) .Nos.4585, 4586 and 4587 of 2017

1.M.Sundararajan

2.T.Nagarajan

3.S.Selvaraj

: Petitioners/Appellants/

Respondents 1 to 3 in both CRPs

vs.

Pandiya Vellalar Madam,

Through its President,

Dr.K.M.Selvaraj,

Palani

: Respondent/Respondent/

Petitioner in both CRPs

COMMON PRAYER : Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 03.04.2017 made in C.M.A.Nos.12 and 13 of 2017 on the file of Additional Subordinate Court, Dindigul modifying the order, dated 20.01.2017, in I.A.Nos.539 and 540 of 2016 respectively in O.S.No.136 of 2016 on the file of District Munsif Court, Palani.

For Petitioners

: Mr.G.R.Swaminathan

in both CRPs

For Mr. T.Antony Arul Raj

For Respondent

: Mr.S.Natarajan

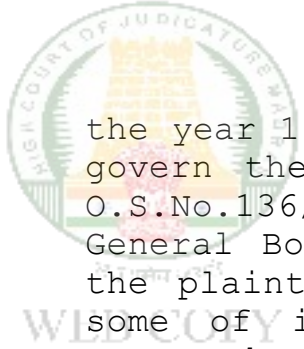
in both CRPs

COMMON ORDER

These two revision petitions are filed by the defendants aggrieved by the interim order of injunction granted by the Trial Court in I.A.Nos.539 and 540 of 2015, which were confirmed by the appellate Court in CMA.Nos.12 and 13 of 2017 with modification.

2.The brief facts leading to the present revisions is as under:-

<https://hcservices.ecourts.gov.in/hcservices/> Pandiya Vellalar Madam is an unregistered Association, formed by Pandiya Vellalar Community of Palani region. It is more than a century old Association owning property in Palani Town. In



the year 1988, the members of the Madam have formulated bye-law to govern the said Association. One Dr.K.M.Selvaraj, plaintiff in O.S.No.136/16 was elected as President of the said Madam in the General Body meeting convened on 13.09.2015. The functioning of the plaintiff as President of the Madam was not satisfactory to some of its members. Hence, those disgruntled members have convened a meeting on 17.07.2016 and had declared the 1st revision petitioner/M.Sundararajan as its President. Based on the outcome of the said so-called general body meeting, the revision petitioners claiming themselves as office bearers of the Madam had started interfering with the management of the Madam.

3.With the above averments, the suit has been filed by the respondent herein, in which, he has sought interim injunction in I.A.No.539 of 2016 restraining the 1st and 2nd defendants from interfering with the affairs of the Madam claiming themselves as office bearers of the Madam and also filed I.A.No.540/16 restraining the 3rd revision petitioner from discharging the function of the Manager of that Madam.

4.The Trial Court, after considering the rival contentions made by the respective parties, allowed both the interlocutory applications by granting interim injunction, restraining the respondents from interfering the affairs of the plaintiff Madam. Aggrieved by that, the defendants in the suit have filed C.M.A.Nos.12 and 13 of 2017. The first Appellate Court, after re-appreciating the facts and bye-law governing the Madam has confirmed the order of the Trial Court with small modifications stating that the interim injunction granted by the Trial Court shall be in force till the expiry of the plaintiffs tenure as President ie., 13.09.2018, or till the expulsion of the plaintiff in accordance with law or till the disposal of the suit which ever is earlier.

5.The defendants aggrieved by that order, have preferred revision before this Court, on the ground that the interim order passed by the Courts below would amount to disposal of the suit itself without trial. Further, the suit filed by unregistered association is not even maintainable and the order restraining the duly elected Office Bearers from discharging his duties by way of an interim order is unjustified and contrary to law.

6.The learned counsel for the revision petitioners submitted that the third defendant S.Selvaraj is a paid servant of the Madam. He has been serving as Manager of the Madam, since 1989. Restraining him from functioning as Manager through Civil Court injunction in a suit is per se illegal. Without resorting the law governing the employer and employee, merely on the allegation of misconduct the interim order is granted against him which is contrary to the well settled principle of Service Jurisprudence.



7. Further more, the learned counsel for the revision petitioners emphasized that majority of the members found that the style of functioning of the plaintiff is against the interest of the Madam. So they thought fit to remove him and elect new Office Bearers. Accordingly, the General Body meeting was conducted on 17.07.2016 and the revision petitioners were appointed as Office Bearers. Since then they are administering the Madam. While so, the interim orders, restraining them in a suit which is perse not maintainable, is illegal, ultra-vires and liable to be set aside.

8. Per contra, the learned counsel appearing for the respondent submitted that the bye-law of the Madam does not provide for removal of duly elected President. The clause 13 of the bye-law specifically states that in case of genuine urgency, half of the members shall give in write to the President to convene the General Body meeting 30 days prior to the date of meeting and on such request alone, the General Body meeting can be convened.

9. In this case, the so called General Body meeting alleged to have been conducted by the revision petitioners on 17.07.2016 is not in consonance with the procedure contemplated in bye-laws. Therefore, the Trial Court as well as the Appellate Court have rightly granted the interim order of restraining the revision petitioners from interfering the management of the plaintiff Madam and there is no error of law or facts in the order impugned. Hence, the revision petitions have to be dismissed.

10. The admitted facts in this case are that the Pandiya Vellalar Madam is a Century old Madam having properties in Palani Town. The properties are commercial shops with substantial rental income. The members of the Pandiya Vellalar community are domiciles of 28 villagers in and around Pollachi, Coimbatore, Thiruppur, Erode, Salem, Chennai and Palani.

11. It is an admitted fact that on 13.09.2015, the Respondent viz., Dr.K.M.Selvaraj of Madras was elected as President. Though it is contended by the revision petitioners that he was not appointed through election, but he was nominated in the General Body meeting held on 13.09.2015, the record reveals that there was duly constituted General Body meeting held on 13.09.2015 and it has been unanimously resolved by the participants to elect Dr.K.M.Selvaraj as President.

12. It is now contented by the learned counsel for the revision petitioners that on 17.07.2016, the General Body meeting was convened for which, the plaintiff was also invited to participate, but he did not participate and other members participated in the meeting and duly elected the first revision petitioner as its President.



13. Perusal of the Madam Bye-law indicates the president of the Madam is to be elected through vote or unanimously by the General Body. The tenure of the President is three years. All the members of the Association are entitled to participate in the General Body meeting and the Annual General Body meeting should be convened in the month of June and July with 10 days prior notice. In case of any extraordinary situation General Body Meeting can be convened with 30 days prior notice duly signed by 50 % of its members. The revision petitioners contented that they requested the President to convene the General Body meeting, he refused to convene the meeting, so, they, on their own, convened the meeting and elected the first revision petitioner as the President on 17.07.2016.

14. No evidence placed on record by the revision petitioners to substantiate the above plea. There is no material to show that the formal request duly signed by 50 % of the members were submitted to the plaintiff, requesting him to convene the General Body meeting. Therefore, the Courts below having considered the plaint and bye-laws governing the association have rightly held that the so called General Body meeting convened by the revision petitioners and appointing the first revision petitioner as President is not in accordance with the bye-laws. Therefore, the Plaintiff who is the duly elected President is entitled for protection to discharge his function as the President.

15. The Appellate Court has clarified the order of the Trial Court, stating that the interim order of injunction will be in operation till the disposal of the suit or till the expiry of the three year tenure or till the plaintiff is removed from the post of President in accordance with law. This clarification makes very clear that if the revision petitioner or any other member of the association really not satisfied with the functioning of its President, they have to resort to the procedure contemplated in the bye-laws, by seeking convention of the General Body meeting and resolve the issue whether the plaintiff should continue as President or not. The so called General Body Meeting held on 17.07.2016 which is not in accordance with the by law of the society will inure no right to the revision petitioners.

16. In so far as the contention of the 3rd Revision petitioner is concerned, since there is a specific allegation of misappropriation of funds and destruction of the records. It is contended by the respondent counsel that only after due notice given to him, action was taken against him. This is the factual issue which has to be tested in the course of the trial. Since the allegations against the 3rd respondent is very serious in nature, permitting the 3rd defendant to function as Manager of the Madam will naturally lead to interfere in the smooth functioning



of the Madam and also confusion among the stake holders. Therefore, I see no merit in interfering with the interim order passed against the 3rd respondent from functioning as Manager. This restrain order will not prevent the 3rd defendant from seeking his emoluments, whatever he is entitled.

17. Therefore, this court finds no error in the order passed by the Trial Court, as modified by the first Appellate Court. Hence, these revision petitions are dismissed and as pointed by the first Appellate Court, if at all the members are not satisfied with the functioning of the President, they can request the President to convene the General Body meeting as per clause 13 of the bye-laws and take decision democratically regarding the functioning of the Office Bearers. Therefore, this Court finds no merits in these revision petitions. Hence, both the revision petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Subordinate Court, Dindigul

2. The District Munsif Court, Palani.

+1cc to Mr. T. Antony Arul Raj, Advocate Sr.No. 58672

+1cc to Mr. S. Natarajan, Advocate Sr.No. 58743

SKM/MM

VB/KKR/SAR4/15.06.2017/5P/5C

**order made in
C.R.P (PD) (MD) Nos. 1025 & 1026 of 2017
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C.M.P (MD) .Nos. 4585, 4586 and 4587 of 2017
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