



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.146 of 2017 (PD)

&

C.M.P.(MD)No.534 of 2017

M.Sundararajan

.. Petitioner/1st Petitioner/
1st Defendant

Vs.

1. Pandiya Vellalar Madam,
Represented by its President,
Dr.K.M.Selvaraj,
S/o.K.A.Murugesan,
No.13, Gandhi Road,
Palani.

.. 1st Respondent/Respondent/
Plaintiff

2. T.Nagarajan

3. S.Selvaraj

.. Respondents 2&3/Petitioners 2&3/
Defendants 2&3

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.12.2016, passed in I.A.No.1055 of 2016 in O.S.No.136 of 2016, on the file of the District Munsif Court, Palani.

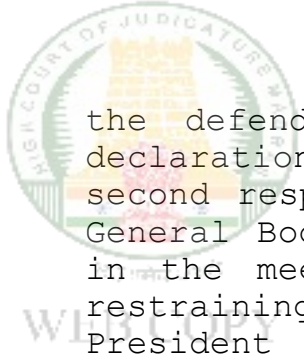
For Petitioner : Mr.Shanmugaraja Sethupathi

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 16.12.2016, passed in I.A.No.1055 of 2016 in O.S.No.136 of 2016, on the file of the District Munsif Court, Palani.

2. Facts of the case:-

(i) The petitioner is the first defendant and the first respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 3 in the suit in O.S.No.136 of 2016 on the file of the District Munsif Court, Palani. The first respondent filed the suit for declaration, to declare that he and other office bearers of Pandiya Vellalar Madam, elected on 13.09.2015, are entitled to be in the Office till 13.09.2018 and for permanent injunction restraining



the defendants from interfering with their functioning and for declaration to declare that the selection of the petitioner and the second respondent as President and Secretary, respectively, in the General Body Meeting held on 17.07.2016 and the resolutions passed in the meeting as 'null and void' and for permanent injunction restraining the petitioner and the second respondent from acting as President and Vice President and for permanent injunction restraining the third respondent/third defendant from acting as Manager in the said Madam and also for permanent injunction to the fourth defendant - Branch Manager, Karur Vysa Bank, Palani, restraining the others to manage the accounts of the said Madam, except the first respondent - Dr.K.M.Selvaraj [President] and the Secretary of the said Madam viz., N.Ayyasamy.

(ii) The petitioner along with the respondents 2 and 3 filed I.A.No.1055 of 2016 before the District Munsif Court, Palani, to reject the plaint. According to the petitioner and the respondents 2 and 3, in the General Body Meeting held on 17.07.2016, Dr.K.M.Selvaraj was removed from the post of President and the petitioner and respondents 2 and 3 were elected as President and other Office bearers. In view of that, Dr.K.M.Selvaraj is not entitled to file a suit, representing the Pandiya Vellalar Madam. Dr.K.M.Selvaraj is not properly conducting the affairs of the Madam and he is acting arbitrarily and he has not properly valued the suit and has also not paid proper Court fee. He has not stated in the plaint that all the properties of the said Madam are under his control and Management. He has also not made out any *prima facie* case and has not stated that balance of convenience is in his favour.

(iii) The first respondent filed counter affidavit and denied all the averments made in the affidavit and stated that he along with other Office bearers were elected on 13.09.2015 and the said election has been recorded in the Resolution book and all elder members have signed in the Resolution book accepting the election of the first respondent and others. The first respondent and other Office bearers are entitled to be in the Management till 13.09.2018. It is not correct to state that the Members are dissatisfied against the first respondent and were pacified by elders. Similarly, he denied the allegation that complaints were given against him and stated that the meeting held on 17.07.2016 was not properly convened and no proper notice was given. There is no provision for removing the President or Executive Committee Members. No notice of meeting was sent to all the members, who are entitled to attend the meeting and to vote and prayed for dismissal of the application.

(iv) The learned District Munsif, Palani, upon considering the averments mentioned in the affidavit and the counter affidavit and also considering the averments mentioned in the plaint, dismissed the application holding that only the averments mentioned in the plaint can be considered for rejecting the plaint.

3. Against the said order of dismissal, dated 16.12.2016, the petitioner has come out with the present Civil Revision Petition.



4. The learned counsel for the petitioner submitted that the learned District Munsif, Palani, has failed to see that there is no cause of action for filing the suit against it's own newly elected Office bearers, challenging the General Body Meeting. He further submitted that the learned District Munsif has failed to see that Dr.K.M.Selvaraj was removed from the post of President by it's General Body Meeting and he ought to have filed the suit in his individual capacity. He also submitted that the learned District Munsif has also failed to see that Dr.K.M.Selvaraj has not properly verified the plaint by affixing the seal of the Madam. A reading of the plaint would show that there is no cause of action for the suit. He further submitted that the first respondent has not paid proper Court fee. Though the learned District Munsif has framed issues with regard to Court fee, he has not dealt with the issue.

5. I have considered the submissions of the learned counsel for the petitioner and perused the materials available on record.

6. From the materials available on record, it is seen that the first respondent Madam, represented by Dr.K.M.Selvaraj, has filed the suit for declaration that he and other Office bearers elected on 13.09.2015, are entitled to be in Office till 13.09.2018 and also for permanent injunction restraining the petitioner and the respondents 2 and 3 and others from interfering with their administration. The first respondent also filed the suit to declare the election of the petitioner and the second respondent as 'null and void' and the General Body Meeting held on 17.07.2016 was not properly convened. No proper notice was issued to all the members for convening the General Body Meeting on 17.07.2016 and no notice was served on all the members. While considering the petition for rejection of plaint, only averments made in the plaint are necessary to decide whether the plaint has to be rejected or not. The averments made in the affidavit or in the written statement cannot be considered for rejection of plaint. In the present case, applying the well settled principle as per judicial pronouncements, the learned District Munsif dismissed the application giving cogent and valid reason. It is for the Court to decide whether the Court fee paid is correct or not. In the circumstances, there is no irregularity or illegality in the order dated 16.12.2016, passed in I.A.No.1055 of 2016 in O.S.No.136 of 2016, by the learned District Munsif, Palani.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

The District Munsif, Palani.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.D.SHANMUGARAJA SETHUPATHI, ADVOCATE IN SR No. 3691

SMN2

TE/SV-MMS : 07/02/2017 : 4P/4C

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