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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) Nos. 2378 & 2435 of 2016 (PD)

and

C.M.P. (MD) Nos. 11222 & 11473 of 2016

C.R.P. (MD) No. 2378 of 2016:

1. Dr. David Raja Bose
2. Dr. J. A. Jeyalal
3. Dr. Lilin Fred

.. Petitioners/Petitioners/
Proposed Respondents

Vs.

1. R. Issac Robi
1/Plaintiff

.. 1st respondent/1st respondent-

2. The Church of South India,
Kanyakumari Diocese,
Rep. by its Bishop,
Having Office at 71A, Dennis Road,
Nagercoil and Village,
Agastheeswaram Taluk,
Kanyakumari District.

3. The Bishop,
C.S.I. Diocese,
Having Office at 71A, Dennis Road,
Nagercoil and Village,
Agastheeswaram Taluk,
Kanyakumari District.

4. The District Chairman,
St. Paul C.S.I. Church,
Kodiyoor, Mulagumoodu Post,
Kalkulam Taluk, Kanyakumari District.

5. The Convener,
Commission for Settlement of Election Disputes,
Kodiyoor, Mulagumoodu Post,
Kalkulam Taluk,
Kanyakumari District.

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

6. Rev. Justin Devadoss
Convenor,



Local Court,
Having Office at Kodiyoor,
Mulagumoodu Post,
Kalkulam Taluk,
Kanyakumari District.

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7.P.Enose

8.N.Ravi

9.Edward Sam

.. Respondents

[7th respondent impleaded vide order
dated 05.12.2016, made in C.M.P.(MD)
No.11674/2016, in C.R.P.(MD)No.2378/2016 &
respondents 8 and 9 impleaded vide order
dated 22.12.2016, made in C.M.P.(MD)
Nos.12138 & 12141/2016, in C.R.P.(MD)
No.2378/2016]

Prayer in C.R.P.(MD)No.2378/2016.: Civil Revision Petition filed
under Article 227 of the Constitution of India, against the order
dated 07.10.2016, made in I.A.No.369 of 2016 in O.S.No.9 of 2016
on the file of the Principal Subordinate Court, Nagercoil,
Kanyakumari District.

C.R.P.(MD)No.2435 of 2016:

1.Dr.David Raja Bose

2.Dr.J.A.Jeyalal

.. Petitioners

Vs.

1.R.Issac Robi

2.The Church of South India,
Kanyakumari Diocese,
Rep. by its Bishop,
Having Office at 71A, Dennis Road,
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6. Reverent Justin Devadoss
Convenor, Local Court,
Having Office at Kodiyoor,
Mulagumoodu Post, Kalkulam Taluk,
Kanyakumari District.

7. Dr. Lilin Fred

.. Respondents

Prayer in C.R.P. (MD) No. 2435/2016.: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 07.10.2016, made in I.A. No. 368 of 2016 in I.A. No. 26 of 2016 in O.S. No. 9 of 2016 on the file of the Principal Subordinate Court, Nagercoil, Kanyakumari District.

For Petitioners : Mr. G. R. Swaminathan
(in both the C.R.P.s.) for Mr. T. Chandrasekaran

For R1 : Mr. Veerakathiravan
(in both the C.R.P.s.) Senior Counsel
for Mr. K. P. Narayanakumar

For R7 : Mr. K. Chellapandian
(in C.R.P. (MD) No. 2378/2016) Senior Counsel
for Mr. S. C. Herold Singh

For R8 : Mr. T. Jeen Joseph
(in C.R.P. (MD) No. 2378/2016)

For R9 : Ms. M. Vijayarathinam
(in C.R.P. (MD) No. 2378/2016)

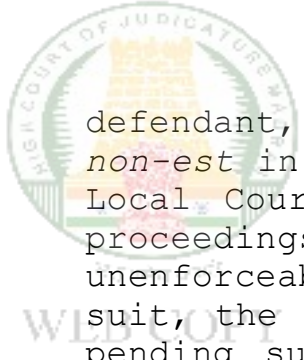
COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal order, dated 07.10.2016, made in I.A. Nos. 369 and 368 of 2016 in O.S. No. 9 of 2016, on the file of the Principal Subordinate Court, Nagercoil, Kanyakumari District.

2. Since the issues involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

3. Facts of the case:-

(i) The petitioners are the third parties to the suit in O.S. No. 9 of 2016 on the file of the Principal Subordinate Court, Nagercoil, Kanyakumari District. The first respondent filed the service summons in the said persons for declaration that the order setting aside the Election held on 01.03.2015 to St. Paul Church, Kodiyoor, as per Communication by the third respondent/sixth



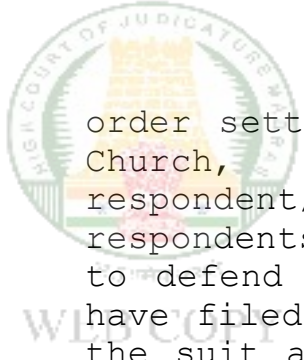
defendant, in B/1455/2015, dated 29.10.2015, as illegal, void and *non-est* in law and also for declaration that the constitution of Local Court by the third respondent/sixth defendant as per his proceedings in B/003/2016, dated 11.01.2016, as illegal, void and unenforceable and for permanent injunction. Along with the said suit, the first respondent filed I.A.No.26 of 2016 for injunction, pending suit. By an order dated 21.01.2016, interim injunction was granted as prayed for keeping the communication calling for eligible Voters list to be prepared and filed on or before 25.01.2016 to be kept in abeyance till the disposal of I.A.No.26 of 2016. Similarly, the further proceeding of the Local Court, vide Letter dated 21.01.2016 also to be kept in abeyance.

(ii) The petitioners in the Civil Revision Petitions filed two applications in I.A.Nos.369 and 368 of 2016, for impleading them as respondents 6 to 8 in I.A.No.26 of 2016 and the defendants 10 to 12 in O.S.No.9 of 2016. According to them, they are members of Vellancode C.S.I. Church and the petitioners 2 and 3 are C.S.I. Members of Melpuram and Liberty Kadamalaikuntu Church Members respectively. According to the petitioners, the Election was held for their Church also on 01.03.2015. On a petition given by the affected party, Election conducted to Kodiyoor Church, in which, the first respondent was elected, was set aside.

(iii) The Election of the Churches of the Diocese is to be conducted once in three years. After the Election to the Churches, the elected Church Committee is to elect the Diocesan Council Members from the Churches concerned. At that stage, in view of the order, dated 21.01.2016, calling for Voters list and proceedings of the Local Court are kept in abeyance, entire administration of various Churches in Kanyakumari District is affected. In the circumstances, the petitioners are proper and necessary parties in the suit as well as in I.A.No.26 of 2016, for injunction filed by the first respondent to set forth correct and true facts to decide the application and the suit.

(iv) The first respondent filed counter affidavit and submitted that the petitioners are not Members of Kodiyoor Church and they do not belong to the Church. The first respondent is challenging the order of the third respondent/sixth defendant, setting aside the Election conducted on 01.03.2015 to Kodiyoor Church and the first respondent has not sought for any relief for the entire Diocese of Kanyakumari District. The third respondent/sixth defendant after several months of Election conducted *i.e.*, on 01.03.2015 to Kodiyoor Church and at the time of Election being conducted for the Diocese has constituted Local Court based on the complaint received from unknown person. In the circumstances, the petitioners are not necessary parties to the present suit and the application.

(v) The learned Principal Subordinate Judge, Nagercoil, Kanyakumari District considering the averments in the affidavit and the counter affidavit, dismissed the application holding that the suit is filed by the first respondent for declaration that the

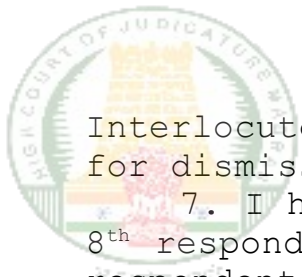


order setting aside the Election held on 01.03.2015 to St. Paaul Church, Kodiyoor, as per Communication by the third respondent/sixth defendant in respect of Kodiyoor Church and the respondents 2 and 3/defendants 5 and 6 are the competent persons to defend the suit. The respondents 2 and 3/defendants 5 and 6 have filed written statement and counter affidavit and contesting the suit and application. It is not the case of the petitioners that the respondents 2 and 3/defendants 5 and 6 are not properly conducting the suit.

4. Against the said dismissal order dated 07.10.2016, the petitioners have come out with the present Civil Revision Petitions.

5. The learned counsel for the petitioners submitted that the order passed by the learned Principal Subordinate Judge, Nagercoil, is inconclusive and caused injustice. The petitioners are given sufficient reason to implead themselves as necessary parties to the suit and application. He further submitted that the learned Principal Subordinate Judge ought to have seen that the trial in O.S.No.9 of 2016 not commenced. The first respondent has filed the suit in a representative capacity under Order 1 Rule 8 C.P.C. and therefore, any member of opposing or supporting the case, must be impleaded as a party to the proceedings. The order dismissing the application for impleading is contrary to the well settled judicial pronouncements and prayed for allowing the Civil Revision Petitions.

6. Per contra, Mr.Veera Kathiravan, learned Senior Counsel appearing for the first respondent in both the Civil Revision Petitions and Mr.K.Chellapandian, learned Senior Counsel appearing for the 7th respondent in C.R.P.(MD)No.2378 of 2016 separately contended that the relief sought for in the suit as well as in the Interlocutory Applications relates to setting aside the Election conducted to Kodiyoor Church. In view of the relief sought for by the first respondent, the first respondent also sought for keeping the Letter calling for fresh Voters list in abeyance. The first respondent has not filed suit and application in respect of entire Diocese of Kanyakumari District. Further, he has filed suit in a representative capacity in respect of Kodiyoor Church alone. Mr.K.Chellapandian, learned Senior Counsel also produced the list of Members of Melpuram Church and submitted that the petitioners filed false affidavit. The respondents 2 and 3/defendants 5 and 6, who have issued impugned order, has already filed written statement and counter affidavit and are contesting the proceedings. The petitioners are not affected by interim order and also their right of voting is not affected and they will not be affected, if the application or the suit is ordered in favour of the first respondent and elected Members. In view of the nature of relief sought for in the suit, the petitioners have no cause of action for impleading themselves as respondents in the



Interlocutory Application and defendants in the suit and prayed for dismissal of the Civil Revision Petitions.

7. I have also heard Mr.T.Jeen Joseph, learned counsel for the 8th respondent and Ms.M.Vijayarathinam, learned counsel for the 9th respondent in C.R.P.(MD)No.2378 of 2016 and perused the materials available on record.

8. A reading of the plaint and the affidavit reveals that the first respondent is challenging the order of the third respondent/sixth defendant, setting aside the Election conducted on 01.03.2015 to Kodiyoor Church and constitution of Local Court to deal with the said Election. The petitioners are not Members of Kodiyoor Church. It is not their case that Bishop and Convener of Local Court are not defending the suit properly. On the other hand, it is seen that they have filed written statement and counter affidavit and are contesting the suit and application. The petitioners have not substantiated the case how they are affected by interim order or the suit filed by the first respondent.

9. From the averments made in the affidavit filed in support of the Interlocutory Applications, the petitioners have not given any reason as to how they are necessary and proper parties to the proceedings. The learned Senior Counsel for the first respondent and the learned Senior Counsel for the seventh respondent in C.R.P.(MD)No.2378 of 2016 submitted that the first respondent has filed the suit in a representative capacity in respect of Kodiyoor Church alone. The learned Principal Subordinate Judge considered Order 1 Rule 10 C.P.C. in proper perspective, whereby the Court is empowered to strike out or add parties to the suit. The learned Principal Subordinate Judge considering all the materials on record in proper perspective, dismissed the applications by giving cogent and valid reasons, as the petitioners are neither necessary nor proper parties to the present proceedings. The learned Principal Subordinate Judge has exercised his jurisdiction conferred on him in proper perspective and there is no irregularity or illegality warranting interference by this Court.

10. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Index :Yes/No

11.01.2017

Internet :Yes/No

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V.M.VELUMANI, J.
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To

The Principal Subordinate Judge,
Nagercoil,
Kanyakumari District.

Common order in

C.R.P. (MD) Nos.2378 & 2435 of 2016 (PD)
and
C.M.P. (MD) Nos.11222 & 11473 of 2016

11.01.2017