

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:03.04.2018
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

O.S.A.No.72 of 2018 & CMP.No.4488 of 2018

L.M.Krishnasamy Nadar

.. Appellant

Vs

1.R.Jayaveerapandian
2.N.Tamizharasan
3.R.Mathivanan
4.R.S.Rajan
5.S.Vijayarajan
6.M.Ramasamy

7.Chennai Vazh Kovilpatti Nadar Uravin
Murai Sangam (Reg. No.45/1984),
Rep. by its President,
No.18/1, New Door No.43,
Lattice Bridge Road, Adayar,
Chennai-20.

8.M/s.Crescent Auto Repairs and Services
India (Private) Limited,
Rep. by its Director, A.K.Abdullah,
No.9, Cenatoph Road, Alwarpet,
Chennai-600 018.

... Respondents

Prayer:- Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent to set aside the order dated 09.02.2018 made in App.No.3303 of 2016 in C.S.No.673 of 2012 and allow the appeal.

Prayer in Appln.3303/16:Application praying that this Hon'ble Court be pleased to appoint an Advocate Commissioner to conduct the election for Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam, Reg.No.45/1984 to elect officer bearers to administer the Sangam and to resolve all the disputes pending disposal of the suit.

Prayer in C.S.673/2012:Civil suit praying this court to pleased to pass a decree

a)Directing the removal of Trustees Defendants 1 to 5 from the Sangam of Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam Regd. 45/84.

b)Appointing New Trustees of Sangam "Chennai Vah Kovilpatti Nadar Uravinmurai Sangam" (Reg.45/84)

c)For framing Scheme of the management of the suit property belonging to the Sangam "Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam" (Reg.45/84)

d)Directing the 1st Defendant to render accounts for the income received from the suit property from 16.7.99 and deposit the amount in the court.

For Petitioner : Mr.T.Murugamanickam,
Senior Counsel
for Mr.B.Mutharasu

For RR1 to 7 : Mrs.Hema Sampath,
Senior Counsel
for Mr.S.Packiaraj

For R8 : No appearance

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The 1st respondent in Application No.3303/2016, who is also the 1st defendant in the main suit in CS.No.673 of 2012, is the appellant herein.

2. Application No.3303/2016 was filed by the respondents no.1 and 2 / plaintiffs, praying for the appointment of Advocate Commissioner to conduct the election for Chennai Vazh Kovilpatti Nadar Uravinmurai Sangam, Reg.No.45 / 1984, to elect office bearers to administer the Sangam and to resolve all the disputes pending disposal of the suit. The said application after contest, came to be disposed of vide order dated 09.02.2018 and challenging the legality of the same, the present appeal is filed.

3. The facts leading to the filing of this appeal briefly narrated, are as follows:

The respondents 1 and 2 filed the suit in ***CS.No.673/2012** against the appellant and six others praying for the following reliefs:

(a) Directing the removal of the Trustees, Defendants 1 to 5 from Trusteeship of "Chennai Vaz Kovilpatti Nadar Uravin Murai Sangam" (Regd No.45/84).

(b) Appointing new Trustees for the Trust "Chennai Vaz Kovilpatti Nadar Uravin Murai Sangam" (formerly No.45/84).

(c) For framing Scheme for the management of the suit property belonging to the Trust "Chennai Vaz Kovilpatti Nadar Uravin Murai Sangam" (Regd No.45/84).

(d) Directing the 1st defendant to render accounts for the income received from the suit property from 16.07.1999 and deposit the amount in the Court.

(e) Directing the defendants 1 to 5 to pay the costs of the suit and

(f) Granting such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

4. It is averred among other things in the said suit that the said Sangam is registered under the Societies Registration Act, 1974, and there were about 120 members and the object of the Society is to work for the benefit and welfare of the Society "Kovilpatti Nadars" residing in and around Chennai who are members of the said Society and the appellant and eight others, were appointed as Managing Committee members and among them, four of them are not known. It is further averred by the respondents 1 and 2 / plaintiffs that due to the compromise made by the members of the said Society and also by raising loans, a property consisting of land and building bearing Door No.18/1, New No.43, Lattice Bridge Road, Adayar, Chennai 600 020, was purchased in the name of the Society vide registered Sale Deed, dated 29.1.1987 (Doc.No.225/1987). It is also averred that the defendants 1 to 5, started mismanaging the affairs and appellant being the President of the said Sangam / Society has entered into a Sale Deed dated 26.09.2007 with the 7th defendant for the sale of suit property for a sum of Rs.6,50,00,000/- and also received an advance of Rs.1,00,00,000/- and also received a sum of Rs.2,50,000/- per month as sale price and the 7th defendant also filed suit in CS.No.23 of 2012 on the file of this Court for specific performance of Agreement of Sale against the defendants 1 to 6 and the same is pending.

5. It is the submission of the learned counsel appearing for respondents 1 and 2/ plaintiffs, though the sale consideration was fixed at Rs.6,50,00,000/-, the said property actually worth about 15 Crores of Rupees.

6. It is further stated by the respondents 1 and 2/plaintiffs that the 1st defendant also started a Society bearing Registration No.61/2006 in the very same entity and the said Society is not a successor to the present Society bearing No.45/1984 and therefore, came forward to file this Original Side Appeal.

7. The respondents 1 and 2/plaintiffs pending disposal of the suit, filed Application Nos.3302 and 3303/2016 praying for appropriate direction, directing the 1st respondent to produce the bank accounts relating to the said Sangam and also praying for appointment of an Advocate Commissioner to elect the Office Bearers of the said Sangam and to resolve all the dispute, pending disposal of the suit.

8. In application No.3303/2016, the Advocate Commissioner was appointed to conduct the election vide order dated 12.12.2017 and the appellant herein made a challenge to the said order by filing O.S.A.No.5 of 2018. The Division Bench of this Court vide judgment dated 09.01.2018 has dismissed the said appeal. It is relevant to extract the Paragraph No.8.1 & 8.2 of the same:

"8.1. This fact, as indicated above, has been taken note of, by the learned Single Judge as well. Therefore, the contention of the learned Senior Counsel that because Form VI was filed with the Registrar of Societies and given the fact that the minutes of meeting records convening of the GBM should establish that a GBM was, in fact, held is, in our opinion, a fallacious and untenable submission. Mere filing of Forms or a recording in the minutes book cannot establish that the meeting was, indeed, held. These documents can, if, at all create, only rebuttable presumption and in this case, the presumption can rebut.

8.2. Pertinently, learned Senior Counsel for the appellant has not been able to show us any material, which would have persuaded to us to accept the stand of the appellant that the GBM, in fact, was held on 04.10.2015."

9. Mr.T.Murugamanickam, learned Senior Counsel assisted by Mr.B.Mutharasu, learned counsel appearing for the appellant has drawn the attention of this Court to the plaint and would submit that by ordering the present application, one of the prayers sought for by the respondents 1 and 2/plaintiffs in the main suit, i.e., the prayer [B] would be granted and therefore technically speaking, the whole suit has become infructuous. It is the further submission of the learned senior counsel for the appellant that the other prayer sought for in the suit, is for

a direction, directing the removal of Trustees/defendants 1 to 5 and for framing the scheme and without adjudicating the merits of the suits by letting in oral and documentary evidence, by passing the impugned order in the application, the suit itself came to be decreed without pleading and would further aver that the suit itself is not maintainable in this regard. The defendants 1,3 and 4 which including the appellant herein has also filed Application No.4824 of 2010 for rejection of the plaint and the same is pending disposal and would further add that the learned Judge in the impugned order has foreclosed the opinion of the 1st respondent/defendant had permitted the new office bearers to take charge and also observed that in that office, there is likelihood of further mismanagement of the affairs of the Society and therefore, prays for interference.

10. Per contra, Mrs.Hema Sampath, learned senior counsel assisted by Mr.S.Packiaraj, learned counsel appearing for the respondents 1 and 2 would submit that since the O.S.A.No.5 of 2018 preferred against the order dated 12.12.2017 made in A.No.3303/2016 in C.S.No.673/2012 came to be dismissed on 09.01.2018, it is not open to the appellant to urge that the impugned order passed by the learned Judge is unsustainable. It is the further submission of the learned senior counsel that the voters list consist of 120 members out of which 39 members who has passed away, is also not at all in dispute and therefore, the learned Advocate Commissioner, has conducted the election in a fair and appropriate manner. Since, there was no lawful nomination of the candidates, nine candidates got elected and the remedy is open to the appellant, if he is so advised, is to raise a election dispute by filing appropriate proceedings and prays for dismissal of this appeal.

11. This Court has considered the rival submissions and also perused the materials placed before it.

12. As rightly pointed out by the learned counsel appearing for the appellant in A.No.3303/2016, the respondents 1 and 2/plaintiffs made a prayer to appoint a Advocate Commissioner to conduct the election for the said Sangam to elect office bearers to administer the Sangam and to resolve all the disputes, pending disposal of the suit in accordance with law. Initially, vide order dated 12.12.2017, the Advocate Commissioner was appointed and it was put to challenge by the appellant / 1st respondent by filing an Original side appeal contending that Form No.VI has been filed with the Registrar of Societies pursuant to the General Body Meeting held on 04.10.2015. However, the Division Bench of this Court has rejected the said appeal for the reason that in the complaint

addressed to the Inspector of Police [Law and Order], it has been stated that on account of ill health of the appellant, the General Body Meeting scheduled to be held on ***04.10.2015**, was cancelled and got postponed. There was no such meeting held on ***04.10.2015**. The Division Bench also held that the General Body Meeting as scheduled to be completed by the appellant herein, was not held till date. Therefore, rejected the said submission as violative and untenable and also recorded the finding that mere filing of Forms or recording in the Minutes Book cannot establish that the meeting was indeed held. The Election conducted by the Advocate Commissioner is in continuation of the proceedings related to the said application.

13. It is also to be noted at this juncture that insofar as the voters list consisting of 120 members are concerned, there was no dispute. Out of them, 39 members had expired and rest of the members became eligible to cast vote in the election and on account of the fact that there were no rival contention, the Advocate Commissioner declared the election of office bearers as unopposed. This Court is also of a considered view that though it is vehemently argued by the learned senior counsel for the appellant despite election, the office bearers should not be allowed to hold the office, this Court has considered that no useful purpose would be served by keeping the office bearers out of the office for the reason that as of now, there was no elected office bearers. Therefore, the case of the Society is also to be taken care of.

***14. The learned senior counsel appearing for the respondents 1 and 2 in response to the said submission would submit that the remedy to challenge the election of the office bearers has not been foreclosed. In the light of the apprehension expressed by the respondents, on instructions, would submit that till the disposal of the civil suit in CS.No.623 of 2012 filed by the 7th respondent, status quo as prevalent on 03.04.2018, shall be maintained till the disposal of the suit. The learned senior counsel appearing for the appellant, on instructions, would submit that as on date, the property in possession of M/s.Cars India shall be maintained and the said submission made by the learned senior counsel appearing for the parties is placed on record.**

15. In the light of the said submission, this Court is of the view that it is always open to the appellant herein to challenge the election of office bearers, in accordance with law before the competent Forum, by raising all the points open to him under law. Since, the learned senior counsel appearing for

the appellant also expresses the apprehension that in the event of new office bearers assuming charge, there is a likelihood of mismanagement of affairs and the suit itself is likely to be withdrawn, this Court is of the view that new office bearers, on assumption of office, shall file statement of affairs with the supporting documents, before this Court in C.S.No.673 of 2012, once in three months, until further orders and the suit cannot be permitted to be withdrawn without the leave of this Court. The appellant is directed to handover the keys and other records in his custody to the elected office bearers within a period of two weeks from the date of receipt of a copy of this judgment.

16. In the result, the Original Side Appeal is dismissed subject to above observation. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

*Amended as per the order dated 20.04.2018 made in OSA.NO.72/2018

-s/d-

Assistant Registrar(CSVI)

dt 24/04/2018

//True Copy//

Sub Assistant Registrar

To

1.The Sub Assistant Registrar,
Original side,
High Court, Madras

To be substituted to the order
already despatched on 19/04/18

+1cc to Mr.B.Mutharasu, Advocate Sr.No.24988

+2cc to Mr.S.Packiaraj, Advocate SR.No.24783

sm:17.4.2018

aa24/04/2018

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