

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 25TH DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.7197 of 2017

in

C.S.No.354 of 2017

Shri P.Haridas,
S/o Late Purushothamdas,
"Shrinath Bagh",
No.1, Nowroji Street,
Chetpet, Chennai 600 031

: Plaintiff

Vs.

1.Shri Manoj Kumar Sonthalia,
S/o Late Shyam Sundar Sonthalia,
O/o Secretary Shri Vallabhacharya,
Vidya Sabha, Madras,
Residing at No.43, Harrington Road,
Chennai 600 031

2.Sri Hitesh Kanodia,
Globe Transport Corporation,
No.6, AE Block, 10th Main Road,
Anna Nagar, Chennai 600 040

3.Shri Ashok Kedia,
"Prabhu Kripa"
K.18, Anna Nagar East,
Chennai 600 102

4.Shri Ashok Kumar Mudhra,
O/o Secretary, Dwaraka Doss,
Goverdhan Doss Vaishanav College,
"Gokul Bagh",
833, EVR Periyar Salai, Chennai 600 106

5.Shri Hari Krishna Jhaver,
S/o R.S.Jhaver,
New No.74, Old No.18/3,
Marshalls Road, 1st Floor,
Egmore, Chennai 600 008

: Defendants

A.No.7197 of 2017 in C.S.No.354 of 2017 :

Bharatkumar K.Shah,
No.1, Nowroji Road,
Chetpet, Chennai 600 031

: Applicant/Proposed 6th Defendant

Vs.

1.Shri P.Haridas,
S/o Late Purushothamdas,
"Shrinath Bagh",
No.1, Nowroji Street,
Chetpet, Chennai 600 031

: 1st Respondent/Plaintiff

2.Shri Manoj Kumar Sonthalia,
S/o Late Shyam Sundar Sonthalia,
O/o Secretary Shri Vallabhacharya,
Vidya Sabha, Madras,
Residing at No.43,
Harrington Road,
Chennai 600 031

: 2nd Respondent/1st Defendant

3.Sri Hitesh Kanodia,
Globe Transport Corporation,
No.6, AE Block, 10th Main Road,
Anna Nagar,
Chennai 600 040

: 3rd Respondent/2nd Defendant

4.Shri Ashok Kedia,
"Prabhu Kripa"
K.18, Anna Nagar East,
Chennai 600 102

: 4th Respondent/3rd Defendant

5.Shri Ashok Kumar Mudhra,
 O/o Secretary, Dwaraka Doss,
 Goverdhan Doss Vaishnav College,
 "Gokul Bagh",
 833, EVR Periyar Salai,
 Chennai 600 106

: 5th Respondent/4th Defendant

6.Shri Hari Krishna Jhaver,
 S/o R.S.Jhaver,
 New No.74, Old No.18/3,
 Marshalls Road, 1st Floor,
 Egmore, Chennai 600 008

: 6th Respondent/5th Defendant

Application praying that this Hon'ble Court be pleased to implead the Applicant/Proposed 6th Defendant (Bharatkumar K.Shah) as the 6th Defendant in C.S.No.354 of 2017.

This application coming on this day before this court for hearing the court made the following order:

This application has been to implead the Applicant/proposed 6th Defendant, Bharatkumar K.Shah as the 6th Defendant in CS.No.354 of 2017.

2. In the affidavit filed in support of this application, it has been stated that the 1st Respondent/ Plaintiff has filed CS.No.354 of 2017, against the Respondents 2 to 6, claiming various reliefs as set out in the plaint.

3. Along with the suit, the Plaintiff has filed OA.No.475 of 2017 and OA.No.476 of 2017, seeking interim injunction restraining the Defendants from in any manner interfering with the discharge of functions of the Office of the Secretary of Dwaraka Doss Goverdhan Vaishnav College, Arumbakkam, Chennai-106, by the Applicant, including in any manner preventing or denying the access to the

records, registers, books, accounts, bank accounts, etc. of the said College and also seeking interim injunction, restraining the Respondents 2 and 3 from functioning or discharging the duties as members of the Executive Council/Office bearers of Shri V.V.Sabha and its units, pending disposal of the suit.

4. This Court had granted interim orders dated 5.5.2017, as prayed for in the said original applications. Subsequently, in A.Nos.2898 and 2899 of 2017, by order dated 23.06.2017, interim orders were vacated. Aggrieved by the same, the Plaintiff has filed OSA.Nos.208 and 209 of 2017 before the Division Bench of this Court, which were dismissed by order dated 4.9.2017, observing as follows:-

- i.The election to the Society shall be held under the supervision of the Hon'ble Mr.Justice K.P.Sivasubramaniam, a former Judge of this Court.
- ii.The Hon'ble Mr.Justice K.P.Sivasumbramaniam, will take all steps necessary for conduct of elections, as per the Constitution of the Society, which would include preparation of the voters list, as per the bye laws.
- iii.The date for holding the elections would be a date which would fall in the month of January 2018. The date can be fixed by the Hon'ble Mr.Justice K.P.Sivasumbramaniam, after consulting all stakeholders. It is made clear that though while consultations will be made, the final decision as to the date will be that of Hon'ble Mr.Justice K.P.Sivasumbramaniam.

iv. In so far as the Executive Council meeting is concerned, the Hon'ble Mr. Justice K.P. Sivasubramaniam, will ensure that it is convened and held under his supervision, preferably, on the same date, when elections are held and results are declared."

5. It has been further stated by the Applicant that he had filed CS.No.334 of 2013 against Shri Vallabhacharya Vidya Sabha and others, claiming various reliefs, relating to his functioning of Secretary of the said Sabha. In the said suit, he had also filed an application for inducting him as a permanent member on par with the Plaintiff herein being the Senior Male descendant of the Donor Family. After the demise of his father, Chief Donor's quota for admission was given to him as per the settlement rights bestowed to the descendants of the family. However, his candidature has neither been considered nor rejected. But, his son, Tapan Tanmay B. Shah, a lineal descendant of the family of late Purushotham Doss Gocooldoss was appointed as permanent member instead of Senior Lineal Descendant in the family as per the bye laws. It has been stated that when he is alive, being the eldest descendant of his father Krishnadoss Purushotamdoss, his son, a lineal descendant of the family has been inducted as a permanent member of the Society contrary to the terms of the Memorandum of Articles of Association of the Society and also contrary to the convention and settlement made by the Chief Donor.

6. It has been further stated that since any order passed

in the present suit may directly or indirectly affect his rights in CS.No.334 of 2013, he ought to have been made a party to the present suit. It has been further stated that he is a necessary party in the present suit for proper adjudication of the rights of the parties. The Plaintiff had deliberately suppressed the various proceedings, which are pending before this Court as well as before the City Civil Court, Chennai, wherein the interpretation of various clauses of the Memorandum of Articles of Association of the 1st Defendant Society is the subject matter of the present suit and in OS.No.325 of 2017 on the file of the V Assistant Judge, City Civil Court, Chennai.

7. It has been further stated that the Applicant is a stake holder and he has been functioning as a Secretary of the Society without any blemish. Since the 2nd Respondent has been acting arbitrarily according to his whims and fancies, he had filed a suit in CS.No.334 of 2013. It has been further stated that he is a proper and necessary party for proper adjudication of the rights of the parties in the present suit. It has been stated that the suit pending on the file of the City Civil Court as stated above may also be transferred and tried along with the two suits pending before this Court, so that a comprehensive disposal can be given, since the issues involved in all the three suits may overlap each other. Unless he is impleaded as a party to the present suit, there is bound to be confusion and chaos in the effective administration of the Institution by reason of the conduct of the proceedings of the Society conducted by the 2nd Respondent/ 1st Defendant in collusion and connivance with the Plaintiff and other office bearers. It is under these circumstances that this application has been filed to

implead the Applicant as the 6th Defendant in the present suit.

8. In this application, the Plaintiff has filed a counter, denying all the allegations of the Applicant/ proposed 6th Defendant. It has been further stated that process had begun and the parties are heard and voters list, number of EC members, other necessary modalities are being finalized. It has been stated that the Applicant is stranger to the proceedings and the orders of the Division Bench cannot be allowed to be delayed. It has been further stated that the Plaintiff is not a party to OS.No.325 of 2017 on the file of the V Assistant Judge, City Civil Court, Chennai nor he is a party in personal capacity in CS.No.334 of 2013. The cause of action for the present suit is independent and entirely different from the cause of action. Hence, it has been stated that the application should be dismissed.

9. This court heard Mr.R.Thiagarajan, the learned counsel for the Applicant, Mr.S.Vijayaraghavan, the learned counsel for the 1st Defendant, Mr.V.Srikanth, learned counsel for the Defendants 2 to 4 and Mr.Harishankar, the learned counsel for the 5th Defendant.

10. The relief sought in the present suit, namely, CS.No.354 of 2017, is with respect to election to the Executive Council of Sri Vallabhacharya Vidya Sabha. As stated in the recital above, interim injunctions were granted originally and subsequently, vacated and the Division Bench had appointed the Hon'ble Mr.Justice K.P.Sivasubramaniam, former Judge of this Court as the Election Officer. There are also parallel suits, which are pending. According to the Applicant herein, they are also one of the reasons why he seeks to be impleaded as a party in the present suit.

11. The Applicant has primarily relied on OS.No.325 of 2017, which is pending on the file of the City Civil Court, Chennai. The said suit had been filed by four Plaintiffs, namely, Rajesh R.Desai, Giridhari G.Shah, Tapan B.Shah and Ramesh R.Bhatt, against Shri Vallabhacharya Vidya Sabha, Madras, represented by its Secretary and others. It must be kept in mind that the third Plaintiff, Tapan B.Shah is the son of the Applicant herein.

12. In the said suit, among the reliefs sought, one relief was for declaration that the amendment to bye laws and rules and addition of Rule 13(a) and 13(b) of the 1st Defendant is ultra vires the Constitution and for declaration that any amendment effected contrary to the Societies Registration Act, 1860, Tamil Nadu Societies Registration Act, 1975 and the Rules, is ultra vires and also for permanent injunction from invoking the amendment in amended Rules 13(a) and 13(b).

13. In the present suit, the relief in (viii) was for declaration that amendment made to the Memorandum of Association of Shri V.V.Sabha by the Executive Council in Clauses 13(a) and 13(b) of the Memorandum of Association is sham and nominal and not binding on the Plaintiff and on the Sabha.

14. However, it is also an admitted fact that the son of the Applicant had actually been made as a permanent member of the Sabha. The relief in CS.No.334 of 2013, in which the present Applicant was the Plaintiff, was with respect to settlement deed dated 15.10.1964 and with respect to grant of affiliation to the Colleges run by the Society and ancillary reliefs. The cause of action of both suits is entirely different. However, it is the

contention of the learned counsel for the Applicant that since that suit is pending, he must be impleaded as a party to the present suit.

15. Whether the reliefs sought in both the suits are the same or overlap with each other are matters to be decided separately. The only issue today is the locus of the present Applicant to join as a party in the present suit.

16. It is an admitted fact that the son of the Applicant has been made as a life member. However, it is the grievance of the Applicant that he was not made as a life member. With respect to this, documents had been filed by the 1st Defendant, which reveal facts adverse to the stand taken by the Applicant.

17. Originally, 'Sri Dwarakadoss Goverdhandoss & Sow.Gangabai Memorial Trust' by letter dated 9.3.2000 addressed to the Secretary, Shri Vallabhacharya Vidya Sabha, had offered for the use of the trust land on the condition that four members of the Donor Family will be life members. Among the four members, the Applicant herein was also named. Subsequently, there was a meeting of the Executive Council on 25.3.2000 of the Trust and the letter mentioned above was placed and it was resolved to accept the donation of one acre of land and also to nominate four members including the Applicant as life members.

18. Subsequently, on 1.1.2010, a notice of meeting of Executive Council was issued and among the Agenda, 6th Agenda was to seek clarification, regarding the eligible members, who can participate in the elections to the Sabha. In that regard, minutes of the Executive Council meeting dated 25.3.2000 and 30.12.2000 were enclosed. The meeting of the Executive Council was held on

11.1.2010. The Applicant herein had actually participated in the said meeting. In the minutes of the meeting, in which, as stated above, the Applicant had participated with respect to the Agenda regarding clarification of the eligible members, who can participate in the elections, it was resolved as follows:-

"7. Clarification regarding the eligible members who can participate in the ensuing elections of the Sabha:-

After a discussion on the resolution of 25.3.2000 where it was resolved to accept 1 acre of land donation from Sri Dwarakadoss Goverdhandoss & Sow.Gangabai Memorial Trust and agree for one member of the family, viz. Shri Bharat Kumar K Shah to be coopted as a member of the Executive Council and also four members of the Donor family to be made life members of the Sabha, namely, Shri Bharat Kumar K Shah, Shri Ashwin Kumar K Shah, Shri Goutham H Shah and Shri Giridhari G Shah, it was decided by the Executive Council that since the above has not been complied with by the above mentioned Trust, the said resolution cannot be acted on. The Council took note that Shri Govind Das Purushotham Das, Managing Trustee of DG Trust will send a proposal for consideration of the Council."

19. It is, thus, seen that the primary contention of the Applicant that he belonged to the Donor Family, who had donated one

acre of land and therefore, as a matter of right, he claimed to be a life member, cannot be accepted on the basis of the documents extracted above. The Donor Family had offered to give one acre of land, but actually it had not given such land. At the time of the offer, they had made a condition that four members of the family including the Applicant must be made as life members and the Applicant was accordingly accommodated and made a life member and remained a life member for nearly 10 years between 2000 and 2010.

20. In the year 2010, the Sabha had once again re-examined the offer made to donate one acre of land and had found as a fact that one acre of land was not given. Consequently, the condition that four members of the Donor Family should be life members was also re-examined and the life membership was revoked. However, pursuant to the suit in OS.No.325 of 2017, the 3rd Plaintiff therein, who instantly happens to be son of the Applicant herein, had been co-opted as a life member. The Applicant herein had not come to court with any honest intention. He had not filed the minutes of the Executive Committee wherein he had himself participated and during which meeting he had been removed as a life member. Therefore, as a matter of fact, the son of the Applicant had been nominated as a permanent member in the meeting of the Executive Committee held on 9.5.2015 and there had been no change to that resolution. It is, thus, seen that the Applicant had not come to court disclosing all the necessary documents.

21. The Applicant is neither a proper party nor a necessary party in the suit, which is pending. As a matter of fact, the Division Bench of this Court had examined the issues of the suit

and had nominated the Honourable Mr. Justice K.P. Sivasubramaniam to conduct the elections. The only reason why the Applicant has filed this application is to somehow or the other ensure that the elections are not held.

22. The learned counsel for the Applicant has relied on **1996 5 SCC 379 (Aliji Momonji & Co. and Laji Mavji and others)** wherein it was held that in a suit for perpetual injunction, the landlord is necessary and is proper party since the demolition of a building would materially affect his right and title.

23. In the present case, the Applicant had ceased to be a member in the year 2010 itself and after seven years, he cannot claim any existing right to seek to be heard in the judicial proceedings in the present suit.

24. The learned counsel for the Applicant has also relied on **ILR 1978 1 P&H 286 (Bara Hanuman Temple Durgain Vs. Gurbux Lal Malhotra)**. In that case, in a suit filed under Section 92 of CPC, it had been held that where an addition of a party does alter the nature of the suit under Section 92 of CPC, a fresh sanction of the Advocate General is necessary. However, it was further observed that under Order 1 Rule 10 of CPC, a discretion is given to the Court to add a person as a Defendant even without the consent of the Plaintiff where it finds that the addition of a new Defendant is absolutely necessary to adjudicate effectively and completely the matter in controversy between the parties.

25. In the present case, the Applicant herein is neither a proper party nor a necessary party. This Court had examined the issues in the suit in the absence of the Applicant. This Court had

examined the issues originally by granting an order of interim injunction and subsequently, vacating the order of interim injunction. The Division Bench had also examined the issues between the parties in the present suit and had thought it fit to conduct the elections and had appointed an Election Officer.

26. During all these applications, the Applicant had not thought it fit to participate in the proceedings. However, when the elections are to be actually held, the Applicant has rushed to the Court, claiming innocence and seeking indulgence. I am unable to accept the contention that the application is bona fide in nature and consequently, I hold that this application deserves to be dismissed and accordingly, it is dismissed. No costs.

Sd/.C.V.K.J

25.01.2018

//Certified to be a true copy//

Dated this the day of 2018.

TR/20.03.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.