

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 25TH DAY OF OCTOBER 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A.No.6382 of 2017

in

C.S.No.407 of 2011

C.S.No.407 of 2011:

Rev.Dr.Colin L.Raymond
No.15, 'O' Block, 30th Street
Ganapathy Colony
Anna Nagar, Chennai 600 010.

....Plaintiff

-Vs-

1.Rev.Dr.J.Samuel Sudhakar
No.6, Central Road
Kilpauk, Garden Colony
Chennai - 600 010.

2.Mr.P.Rajah Prabhakaran
No.6, Central Road
Kilpauk, Garden Colony
Chennai 600 010.

3.Mr.P.Paul Ravinder
No.6, Central Road
Kilpauk, Garden Colony
Chennai 600 010.

4.Mr.Churchill Joseph
No.10,Mandapam Road
Kilpauk, Chennai 600 010.

5.Mrs.Marilla Austin
Teacher
Doveton Boys' Higher Secondary School
No.1-7A, Ritherdon Road
Vepery, Chennai 600 007.

6.Miss.Marisa Austin
Teacher
Doveton Girls' Higher Secondary School
No.1-7A, Ritherdon Road
Vepery, Chennai 600 007.

All having office at:-

C/o.Christ Church
No.56, Anna Salai
Chennai 600 002.

...Defendants

A.No.6382 of 2017:

Mr.P.Rajah Prabhakaran
No.6, Central Road
Kilpauk,Chennai 600 010.
Defendant

...Applicant/2nd

-Vs-

1.Rev.Dr.Colin L.Raymond
No.15, 'O' Block, 30th Street
Ganapathy Colony
Chennai 600 010.

2.Rev.Dr.J.Samuel Sudhakar
 No.6, Central Road
 Kilpauk, Garden Colony
 Chennai - 600 010.

3.Mr.P.Paul Ravinder
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 Teacher
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 Vepery, Chennai 600 007.

6.Miss.Marisa Austin
 Teacher
 Doveton Girls' Higher Secondary School
 No.1-7A, Ritherdon Road
 Vepery, Chennai 600 007.

...Respondents/Defendants

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.407 of 2011 as not maintainable as barred by law.

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

The above application is filed by the 2nd defendant in suit seeking rejection of the plaint in C.S.No.407 of 2011, as not maintainable and barred by law.

2. A counter has been filed objecting to the relief sought. Detailed submissions of Ms.Dakshayani Reddy, learned counsel for the applicant and Mr.N.D.Bahety, learned counsel appearing for the respondent, have been heard.

3. The suit has been filed seeking the following reliefs:

(i) a declaration that the defendants are not and in fact, have ceased to be a members of the Select Vestry/Pastorate Committee of the Christ Church w.e.f. 24.04.2011;

(ii) a declaration that the holding and discharging of duties of the defendants as members of the Select Vestry/Pastorate Committee of Christ Church after 08.05.2011 is without any *locus standi* and illegal and;

(iii) a permanent injunction restraining the defendants for calling for any meeting of either the Select Vestry/Pastorate Committee of the Christ Church or the general body.

4. According to the applicant, the prayers in suit relate to an election conducted in the year 2011. As per the bye-laws/constitution of the Christ Church, bye-election is to be conducted once every two (2) years and thus the relief sought for in the plaint does not survive, as on date.

5. The applicant also points out that earlier the

from discharging the duties as a member of the Christ Church vide O.S.No 595 of 2011. The said application came to be dismissed on 06.07.2011 and a specific finding was recorded therein that the plaintiff/1st respondent had been relieved from the post of Pastor in a meeting of the Select Vestry/Pastorate Committee held on 15.04.2011. This order has attained finality as on date as an intra court appeal filed challenging the aforesaid order has also been dismissed. The position that the 1st respondent has been divested of his position as pastor has been accepted by him.

6. Furthermore, an application came to be filed by 1st respondent/plaintiff in the suit bearing A.No.1662 of 2015 seeking a direction that the plaintiff continues to be a member of the Christ Church, entitled to all rights and privileges emanating from the office and that he was entitled to stand for the election to be held on 05.04.2015.

7. This application was also dismissed by order dated 04.11.2015 recording the position that the 1st respondent had been removed from the post of Pastor on 19.04.2011.

8. According to the applicant, the 1st respondent had contested the elections held on 15.05.2014 and hence was well aware of the position that the tenure of office bearers elected in 2011 had expired in 2013 and thereafter in 2015 and 2017.

9. Thus, according to the applicant, it is an uncontested position that the plaintiff was divested of the post of Pastor

as early as on April 2011 and the reliefs sought for in the suit are thus infructuous as on date.

10. The applicant has relied on a judgment of the Supreme Court in *Shipping Corporation of India Ltd. Vs. Machado Brothers and Ors* dated 25.03.2004 in Civil Appeal No. 1855 & 1856 of 2004, emphasizing that there is a duty cast upon the trial court to put an end to litigation, if the same has become infructuous. There could hardly be any quarrel or dispute with regard to this proposition. However, it is a question of fact as to whether the litigation has indeed come to an end and that has to be determined on a case by case basis.

11. Reliance is also placed on a decision of this Court (Madurai Bench) in C.R.P.PD(MD) No. 1484 of 2018. The aforesaid matter dealt with the validity of an election held on 05.04.2015 in terms of the Tamil Nadu Societies Registration Act, 1975. Since, as per the provisions of Section 15 of the said Act, the tenure of an elected body can be only three(3) years, when the matter came up for hearing on 30.08.2018, the learned Judge held that the suit had become infructuous.

12. In counter, the first defence raised by the 1st respondent is that the application is not maintainable since it has been filed in terms of Order VI Rule 17 dealing with amendment of pleadings and not order VII Rule 11, which provides for rejection of plaint.

13. I am of the considered view that this is only a technical error, since the prayer in the application is clear enough. I thus proceed to reject this contention and adjudicate upon the submissions on merits. I may also state that this defence has not been raised in the course of hearing and is obviously not pursued.

14. As far as the merits are concerned, learned counsel for the respondent emphasizes the position that the prayer is, in fact, is for a declaration that the 1st respondent has not ceased to be a member of the Select Vestry/Pastorate Committee. Thus, even if he has been removed from the post of Pastor the suit is still relevant to decide the question of whether the membership of the committee has been terminated or continues.

15. Learned counsel relies on paragraph 3 of order dated 04.11.2015 extracted as below:

3. In the considered opinion of this Court, the prayer sought for by the applicant in this application at this stage cannot be granted as it was depend upon the result of the main suit. Therefore this application is dismissed.

16. Mr. Baheti relies on a judgment of the Supreme Court in the case of *Babu Verghese Vs. Bar Council of Kerala & Others* dated 16.03.1999 arguing that the cause of action would survive even beyond the tenure of the elected body.

17. Thus, according to him a decree, if passed now, would be operative from the date from when the relief has been sought.

18. I do not agree with the respondent. The judgment of the Supreme Court is dated 16.03.1999 and the proceedings impugned therein had been occasioned in the year 1997. The question that arose before the Supreme Court was whether the resolution adopted by the Kerala Bar Council on 08.02.1997 would relate back to 13.01.1997, which was the date on which the resolution had been circulated to the members and whether the term of the Bar Council should be deemed to have been extended from that date. It is in the aforesaid factual matrix and in the context of interpreting Rule 6 of the Kerala Bar Council Rules that the observations of the Supreme Court at paragraph 31 and 32 were rendered. I am of the considered view that reliance on the aforesaid judgment does not advance the case of the respondent in the present matter.

19. The Division Bench, by its order dated 03.04.2012 passed in O.S.A.No.65 of 2012 notes, as a matter of fact, that the election in 2011 had been conducted pursuant to orders of this Court and subject to the result of the suit. The elected body had been functioning for more than eight (8) months when the appeal came to be decided and there had been no allegations of mismanagement of the affairs of the Church or connected institutions for the intervening period. The Bench noted that unless and until the election of the office bearers

on 19.06.2011 was set aside, the appellant would have no effective remedy. Considering that the term of the office bearers was for two years, the Bench directed the listing of the suit expeditiously after completion of pleadings, in any event, within a period of nine (9) months from completion therefrom for framing of issues.

20. This order was passed on 03.04.2012 and if the directions had been scrupulously adhered to, the suit would have come up for hearing in January 2013 for framing of issues and disposal immediately thereafter. The verdict in suit would thus have been available even during the tenure of the members elected in the elections that had taken place on 19.06.2011. Obviously, this is the timeline that the Division Bench had in mind while passing the aforesaid order.

21. However, we are today in 2018, and admittedly, the tenure of the Committee elected on 19.06.2011 has expired in 2013. Re-elections were conducted in 2013 and the tenure of the Committee elected then has expired in 2015, repeated again in 2017. There have thus been three Committees that have been elected after 19.06.2011 and I am of the view that the clock cannot be put back so far as to invalidate proceedings that have taken place seven (7) years ago.

22. The cause of action as far as the present suit concerned does not survive.

23. This application is allowed and the plaint in

C.S.No.407 of 2011 stands rejected. It is, however, made clear

that the rights of the parties in respect of proceedings that have transpired later are protected and it is open to them to take appropriate proceedings in regard to the same in accordance with law.

Sd./- A.S.M.J

25.10.2018

//Certified to be a true copy//

Dated this the day of 2018.

DL/06.12.2018

COURT OFFICER

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



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