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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 07.03.2018
DELIVERED ON : 17.04.2018
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (PD) (MD)No.166 of 2018
and
C.M.P. (MD)No.758 of 2018

The Chairman,
Pastorate Committee,
St. George's Church,
Main Guard Square,
Near YMCA,
Madurai -1.

: Petitioner/ 1st respondent/ 1st Defendant
vs.

1.M.Gnanaraj : 1st respondent / Petitioner / Plaintiff

2. The Secretary,
the Pastorate Committee,
St. George's Church,
Main Guard Square,
Near YMCA,
Madurai -1.

3. The Bishop,
Church of South India,
Madurai and Ramnad Diocese,
having his Office at 162,
East Veli Street,
Madurai.

: Respondents 2 & 3 / Respondents 2 & 3 /
Defendants 2 & 3

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 22.12.2017, passed in I.A.No.241 of 2017 in O.S.No.157 of 2017 by the learned Principal District Munsif, Madurai.

For Petitioner : Mr.T.A.Ebinezer
For 1st respondent : Mr.F.X.Eugine

For 2nd respondent : Mr.V.Karuna

For 3rd respondent : Mr.M.Rajaraman

ORDER

This Civil Revision Petition has been filed by the revision petitioner / 1st defendant as against the order appointing an Advocate Commissioner to conduct the election with certain directions.



2. The 1st respondent / plaintiff, who is a member of the Saint George's Church, has filed a suit in O.S.No.157 of 2017 for a mandatory injunction directing the 3rd defendant to interfere with the election process right from the preparation of the electoral rolls upto the announcement of the successful candidates within a time frame or appoint an Advocate Commissioner to conduct the election of members right from the preparation of the electoral rolls upto the announcement of the successful candidates within a time frame. The 1st respondent / plaintiff has also filed an application in I.A.No.241 of 2017 seeking to appoint an Advocate Commissioner to scrutinize the members list and voters list of the Church and to conduct election for the tenure 2017-2020 till the disposal of the suit. The Court below has allowed the said interim application and appointed an Advocate Commissioner with a direction to prepare provisional voter list based on the members list and after getting objection, prepare final voter list and then, to conduct election. Aggrieved by that order, the petitioner / 1st defendant, who is a Chief Priest of the church, has filed this civil revision petition.

3. The learned counsel for the petitioner / 1st defendant would mainly contend that it is a dispute between two churches and that one church wants to ride over another and that since the main relief in the suit itself is to conduct election by appointing an Advocate Commissioner, the Court below ought not to have granted the said relief as interim relief without trial and the same is also in violation of the order passed by this Court in Tr.C.M.P.No.365 of 2017 wherein this Court has held that "when the suit is ripe for trial, any interim order is granted, it would have great impact in the main suit. Thus, he prayed to allow this civil revision petition by setting aside the interim order passed by the Court below.

4. The learned counsel for the respondents 1 & 3 in unison submitted that the tenure of the Chairman, Pastorate Committee of the Saint George's Church was over in the year 2017 and a new chairman has to be elected, but this petitioner / 1st defendant along with the 2nd respondent / 2nd defendant has been doing hurdles to stultify the democratic set up in order to continue to enjoy the same office and aggrieved over the same, two members of the church have filed two separate suits seeking to conduct election by appointing an Advocate Commissioner and preparing voters list and that in the interim application filed in this suit, based on the admission of the petitioner / 1st defendant that there is some discrepancy in the voter list, the Court below has appointed an Advocate Commissioner by directing him to prepare provisional voter list and after getting objection, prepare final voter list and then, to conduct election and therefore, the order impugned in this petition need not be interfered with. Thus, he prayed to dismiss this civil revision petition.



5. The learned counsel appearing for the 2nd respondent / 2nd defendant reiterated the submissions of the learned counsel for the petitioner / 1st defendant.

6. Heard the learned counsel for both sides and perused the records carefully.

7. Though the learned counsel for the petitioner / 1st defendant has projected the case as if it is a dispute between two churches and one church wants to ride over another, this Court is not inclined to go into the same, because it is not the issue involved in this petition.

8. The only issue to be decided in this case is whether the order passed by the Court is correct or not?

9. According to the revision petitioner / 1st defendant, the order passed by the Court below amounts to granting the main relief itself. As rightly stated by the revision petitioner / 1st defendant, the relief sought for the 1st respondent / plaintiff are one and the same. At this juncture, this Court is inclined to refer to a decision in **Ashok Kumar Bajpai Vs. Ranjana Bajpai** reported in **AIR 2004 107**, wherein a Division Bench of the Allahabad High Court, after analysing various decisions of the Hon'ble Supreme Court, in paragraph No.17 has held as follows:

"17. In view of the above, it is evident that the Court should not grant interim relief which amounts to final relief and in exception circumstances where the Court is satisfied that ultimately the petitioner is bound to succeed and fact-situation warrants granting such a relief, the Court may grant the relief but it must record reasons for passing such an order and make it clear as what are the special circumstances for which such a relief is being granted to a party."

10. Reading the above decision makes it clear that the interim relief which amounts to final relief can be granted if the Court comes to a conclusion that the special circumstances warranted to grant such relief. Admittedly, in this case, the suit was filed by the 1st respondent / plaintiff praying to conduct election by appointing an Advocate Commissioner on the ground that there is some discrepancy in the electoral list. According to the 1st respondent / plaintiff, though he has given several representations to the petitioner/ 1st defendant and the 2nd respondent / 2nd defendant, they have not prepared voter list, exhibited final voter list and decided to conduct election in time. According to the petitioner / 1st defendant, due to huge work regarding Holy confirmation service, the election process was



delayed and the same was recorded in the Minute's book and that the third respondent has no right to interfere in this matter.

11. However, it is seen that in the other suit in O.S.No.271 of 2017, which has been filed for the very same relief by another member of the church, the petitioner / 1st defendant has filed an application in I.A.No.760 of 2017 in O.S.No.271 of 2017 seeking permission to conduct the election on the basis of an alleged corrected voter list. The petitioner / 1st defendant himself by the said conduct has admitted that there was some discrepancy in the voters list originally prepared by him. I hope that it could not be the intention of the parties that the election should not be conducted in a fair manner. Considering the said admission of the petitioner / 1st defendant and also considering the intention of the parties to conduct fair election and in order to give quietus to the issue, the Court below has appointed an Advocate Commissioner and to conduct the election after preparing the voters list, pending disposal of the suit. This Court does not find any reason to interfere with the order passed by the Court below.

12. It is also the contention of the petitioner / 1st defendant and the 2nd respondent / 2nd defendant that due to the appointment of the Advocate Commissioner, the customary practice is affected. It was also the contention of the petitioner / 1st defendant that the Advocate Commissioner belongs to opposite group and he will act in partial manner. Mere allegation on presumption or assumption would not be sufficient for finding fault with a person or an action. However, if the Advocate Commissioner acted in partial or vindictive manner, it is always open to the petitioner / 1st defendant to approach the Court below and prove the same to the satisfaction of the Court, after completion of the election.

13. It is a settled position of law that each case has to be decided according to its own facts and circumstances. This Court is of the view that in this case, the special circumstances warranted to grant the interim relief amounting to final relief and such order passed by the Court below need not be interfered with.

14. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar



To

The Principal District Munsif,
Madurai.

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+1cc to Mr.F.X.Eugene, Advocate Sr.No.61790
+1cc to Mr.T.A.Ebinezzer, Advocate Sr.No.61801

GCG

VB/SV/MMS/SAR1/18/04/2018/5P/4C

order made in
C.R.P. (PD) (MD) No.166 of 2018
17.04.2018