



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2018

Pronounced on : 09.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

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C.R.P. (MD) Nos. 1196 and 1197 of 2018

and

CMP (MD) Nos. 5047 and 5048 of 2018

CRP (MD) No. 1196 of 2018

1.A.S.S.Subbiah
2.S.Gunasekaran
3.B.K.Sridhar
4.K.Venugopal
5.T.Selvaraj
6.K.Sivakumar
7.A.Inayat Ussainkhan
8.S.Pasupathy Ramkumar
9.T.Rengarajan

.. Petitioners

Vs.

Cardamom Planters' Association
College Society through its Secretary
S.Ramanathan,
Bodi, Theni District.

.. Respondent

Prayer: CRP (MD) No. 1196 of 2018 filed under Article 227 of the Constitution of India, against the Judgment and Decree dated 02.04.2018 made in CMA.No.3 of 2017 on the file of the learned Sub-Court, Theni, confirming the order dated 28.02.2017 in I.A.No.392 of 2016 in O.S.No.76 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinayakkanur.

AND

CRP (MD) No. 1197 of 2018

1.S.Gunasekaran
2.A.Inayat Ussainkhan
3.Ganesan
4.N.Parameswaran
5.Thirupathyvasagan
6.Jayabalan
7.B.Jeyaraman
8.R.Mahendran
9.Arumugam @ Sampath
10.Ashok Kumar
11.T.Selvaraj
12.S.Pasupathy Ramkumar
13.L.Ramaraj



14.S.Pasupathy Ramkumar
15.B.K.Sridhar
16.Anbuvel
17.Sivakumar
18.N.B.R.Devanathan
19.Tharaneedharan
20.G.Prabakaran
21.Deepak

.. Petitioners

vs.

Cardamom Planters' Association,
through its President,
S.V.Subramanian,
Bodi, Theni District.

.. Respondent

Prayer: CRP(MD)No.1197 of 2018 filed under Article 227 of the Constitution of India, against the Judgment and Decree dated 02.04.2018 made in CMA.No.4 of 2017 on the file of the learned Sub-Court, Theni, confirming the order dated 28.02.2017 in I.A.No.391 of 2016 in O.S.No.75 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinayakkanur.

(In both the CRPs) :

For Petitioners Mr.R.Suriyanarayanan

For Respondents : Mr.Isaac Mohan Lal, Senior Counsel
for Mr.B.Pandiaraj

COMMON ORDER

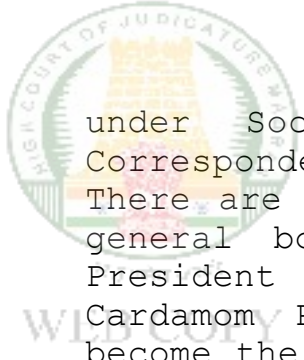
CRP(MD)No.1196 of 2018

The petitioners herein filed the CRP(MD)No.1196 of 2018 against the fair and decreetal order dated 02.04.2018 in CMA.No.3 of 2017 on the file of the learned Sub-Court, Theni, which was dismissed, confirming the fair and decreetal order dated 28.02.2017 in I.A.No.392 of 2016 in O.S.No.76 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinaickanur.

2.The respondent herein is the plaintiff filed O.S.No.76 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinaickanur to declare that the Extraordinary General Body Meeting of the petitioner/defendant dated 11.09.2016 is illegal and non-est in the eye of law and for other reliefs.

3.The brief case of the respondent/plaintiff is that:

The plaintiff is a registered Association vide S.No.36/1972



under Societies Registration Act 1860, the Secretary and Correspondent is the Appropriate Authority to sue and being sued. There are 87 members in the plaintiff association and its annual general body meeting was proposed on 30.09.2016. The elected President and Vice President of the Parental Association i.e., Cardamom Planters Association for 3 years would automatically become the members of the Managing Committee for the ongoing three years and as such for the period 2016-2019 office bearers of the parental association were proposed to be elected in the general body meeting proposed to be held on 25.09.2016.

4.The 1st petitioner herein has issued a publication in "Dinamalar Daily" on 15.09.2016 that an extraordinary general body meeting of the respondent/plaintiff Association was convened on 11.09.2016 in furtherance of convener committee meeting on 09.07.2016 and the present office bearers of the plaintiff Association were removed and are disqualified from the basic membership in the Extraordinary General Body Meeting dated 11.09.2016. It was further claimed by the 1st petitioner and his men the defendants 2 to 9 that they were elected in the extraordinary general body meeting dated 11.09.2016, that after the said publication they tried to capture the plaintiff Association. A protest notice dated 16.09.2016 was issued by the plaintiff Association, in Dinamalar and Dinathanthi.

5.Immediately after the paper publication the plaintiff lodged an objection to the District Registrar, Periyakulam not to record and update records if any produced and forwarded by the 1st petitioner. The defendants 1 to 9 through the 1st defendant/1st petitioner by misusing the name and seal of the plaintiff has produced several documents and Form-VII in respect of alleged meeting on 11.09.2016 and sought to record the same.

6.It is further claimed by the petitioners that the Extraordinary General Body Meeting was presided over by one Parameswaran wherein 1st petitioner herein is alleged to have been elected as President, who is not at all a member of the plaintiff association whose membership was already removed in 55th general body itself which was not challenged by him so far. Hence, the claim of the petitioners herein/ defendants 1 to 9 became invalid. But, the petitioners are said to have made a publication of the said election of the 1st petitioner in "Madurai Mani" Newspaper. The alleged newspaper is not at all circulated in Bodinayakanur. Further, the petitioners/defendants 1 to 9 are trying to interfere in its day-to-day administration of the Association College.

7.The brief case of the petitioners/defendants is that:

<https://hcservices.ecourts.gov.in/hcservices>
The plaintiff society has no right to sue as its office bearer (S.Ramanathan) was removed from the Secretary and Correspondent of the society on 04.09.2016 by a resolution in the

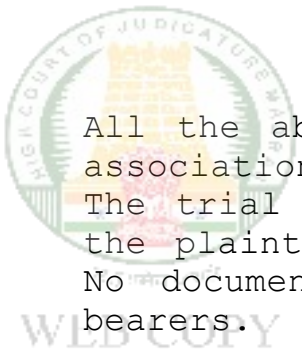


Extraordinary General Body meeting held on 11.09.2016 and new list of office bearers was furnished to the District Registrar. After the removal of office bearers of plaintiff society, they have no right to file the above suit for declaration or conduct election on 30.09.2016. The petitioners/defendants 1 to 9 have challenged the same in O.S.No.219 of 2016 on the file of the learned Sub Court, Theni. The petitioners/ defendants 1 to 9 contended further that S.Ramanathan, if aggrieved by removal of membership can challenge the same in his individual capacity and not representing the plaintiff college society and he cannot represent the society to file the above suit. It was further contended by the petitioners/defendants 1 to 9 that contentions in Interlocutory Application are the subject matters to be decided in the main suit. The petitioners/defendants 1 to 9 strongly opposed the grant of injunction on the above contentions.

8.After hearing the arguments on both sides, the trial Court allowed the Interlocutory Application by order dated 28.02.2017 with the following discussions:

"The trial Court found that in order to prove the locus standi to file the suit by Thiru.Ramanathan representing the plaintiff association as its Secretary filed Ex.P2, joint report of 44th extraordinary general body meeting, Ex.P6 letter of plaintiff society and its resolutions Exs.P8, P9 and P14 wherein, S.V.Subramanian was elected as President and S.Ramanathan was elected as Secretary of College Committee. The trial Court rejected the plea of the defendants 1 to 9 that office bearers elected after the meeting on 30.09.2016 alone have right to sue the above suit, since the resolution Ex.P9 passed by newly elected office bearers have elected S.V.Subramanian as President and Ramanathan as Secretary of College society once again. As per the bye-law only the Secretary of the College society has to sue and hence the present suit filed by Ramanathan as Secretary of plaintiff is in accordance with law and therefore, the contention that Cardamom Planters' Association College was not impleaded as a party is unacceptable."

9.Since the issue whether the said meeting held on 30.09.2016 was in accordance with law or not has to be decided. The prima facie issue to be decided here is whether the college administration is run by the plaintiff society or the defendants 1 to 9 in the suit. The defendants 1 to 9 have not filed any document in support of their defence whereas the plaintiff association filed 14 documents. The respondent/plaintiff herein filed society's bye-laws as Ex.P1, report of 44th extraordinary general body meeting as Ex.P2, Minutes Book of Managing Committee dated 29.08.2016 as Ex.P8, report of the annual general body meeting dated 30.09.2016 as Ex.P11, Meeting Resolution as Ex.P9.



All the above documents disclose prima facie that the plaintiff association is functioning under S.V.Subramanian as its President. The trial Court held that no evidence is available to show that the plaintiff association is functioning under the 1st defendant. No document is filed for convening meeting or electing office bearers.

10. Admittedly, there are 87 members in total in the plaintiff association College which is found in Ex.P2 report of extraordinary general body meeting and Ex.P10. A perusal of Ex.P8 dated 29.08.2016 shows that extraordinary general body meeting was proposed on 30.09.2016 under the head of S.V.Subramanian as President and it was held on 30.09.2016 wherein 9 office bearers were elected as per resolution Ex.P14 filed by the plaintiff association. It also disclosed that in the said meeting 54 members were present and signed. Ex.P9 resolution passed on the same day reveals that S.V.Subramanian was elected as President, Karuppiyah was elected as Vice President and Ramanathan was elected as Secretary. Ex.P11 is the requisition to send the Joint Committee Report and Form-VII to the District Registrar for registration. From the above, it is clear that conduct of election and election of new office bearers of plaintiff association after following the proper procedure by sending notice and convening the meeting are accordance with law.

11. The petitioners/defendants 1 to 9 having stated that they convened meeting on 09.07.2016 and extraordinary meeting on 11.09.2016 to conduct election have not filed any document to prove the same. Notice for meeting claimed by defendants 1 to 9 is also false and disproved by the petitioner herein. There is no requisition by the defendants 1 to 9 to convene the extraordinary general body meeting and Ex.P5 also proved the same. There is no detail as to how many members participated in the alleged convener meeting held on 09.07.2016. There is no bye law to enable the defendants to give publication of notice for meeting in "Madurai Mani". Bye law states only notice by ordinary post and also affixture in the Notice Board of plaintiff association which was also not done by defendants 1 to 9.

12. While deciding whether irreparable loss would be caused to the defendants 1 to 9 in allowing the petition for injunction, the trial Court found that bank account of the college is freezed affecting day-to-day administration of the college and students of the college are unable to use the account for deposit of fees and teachers and staff find it difficult to draw their salary and to buy petrol and diesel for college vehicles. In view of the hardship and suffering of students, teachers and staff in the day-to-day administration of the college, the trial Court concluded that irreparable loss and hardship would be caused to the society college. The respondent/plaintiff has proved their claim and the prima facie



case and balance of convenience in favour of plaintiff association and allowed the petition and granted injunction in favour of the respondent/plaintiff herein.

CRP(MD)No.1197 of 2018

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13.The petitioners herein filed the CRP(MD)No.1197 of 2018 against the fair and decreetal order dated 02.04.2018 in CMA.No.4 of 2017 on the file of the learned Sub-Court, Theni, which was dismissed, confirming the fair and decreetal order dated 28.02.2017 in I.A.No.391 of 2016 in O.S.No.75 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinaickanur, filed by the respondent/ plaintiff.

14.The brief case of the respondent/plaintiff is that:

The plaintiff is a registered Association vide S.No.271/1959 under the Societies Registration Act, 1860. The President is the appropriate authority to sue and being sued. There are 488 members on its roll and its annual general body meeting was proposed on 25.09.2016. Election of its office bearers is held once in every 3 years and proposed election was for 2016-2019 in the general body meeting on 25.09.2016. The respondent/plaintiff filed a suit in O.S.No.75 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Bodinaickanur to declare that the extraordinary general body meeting of the plaintiff dated 04.09.2016 is illegal and nonest in the eye of law and consequently that resolutions, selection of office bearers and constitution in the extraordinary general body meeting are not valid and nonest in the eye of law.

15.The 1st defendant/1st petitioner had given paper publication on 15.09.2016 in "Malai Malar" alleging that an extraordinary general body meeting of the plaintiff Association has been convened on 04.9.2016 in furtherance of convener committee meeting dated 09.07.2016. It was also stated that the present office bearers of the plaintiff association were removed from basic membership in the alleged Extraordinary General Body Meeting dated 04.09.2016. It was further stated that the 1st petitioner/1st defendant and his men were elected as office bearers. This attempt was made to capture the plaintiff association which was thwarted by giving police complaint by the plaintiff association to the Superintendent of Police, Theni.

16.It was further contended that the 1st petitioner/1st defendant who is not at all a member of plaintiff association has presided over the alleged extraordinary general body meeting. The membership of the 1st petitioner/1st defendant was already removed from the plaintiff association. The extraordinary general body meeting conducted by the respondent/plaintiff. Earlier a special general body meeting of plaintiff was convened



on 31.07.2016 for amendment of its by laws wherein the 1st defendant/ 1st petitioner appeared and signed in the attendance registrar. The 1st defendant to wreck vengeance to his previous defeat in the election at a close encounter of 2 votes and with a view to grab the administration of plaintiff association involved himself in the above fraudulent act. Hence, the unlawful attempt of defendants 1 to 21 requires to be prevented and in the above circumstances the plaintiff association filed the above suit in O.S.No.75 of 2016 for the relief prayed supra.

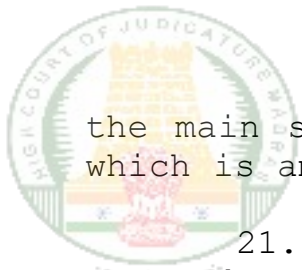
17.Thus there was no proper meeting, no members of plaintiff association or 1st petitioner present in the said meeting and no election was conducted as per the bye law of the plaintiff association. Hence, the alleged meeting or election of office bearers claimed by the defendants 1 to 21 is without any basis or evidence and it is illegal and invalid.

18.The respondent/plaintiff also filed I.A.No.391 of 2016 in O.S.No.75 of 2016 for an ex-parte ad-interim injunction restraining and forbearing the petitioners/defendants, their men, servants and agents in any way interfering with the day-to-day administration and function of plaintiff college society.

19.The brief case of the petitioner/defendant is that:

The petitioners/defendants 1 to 21 filed their counter that the plaintiff society has no right to sue and its office bearer (S.V.Subramanian) was removed from the post of President of the Association on 04.09.2016 by members of the society by resolution in the Extraordinary General Body meeting held on 04.09.2016 and new list of office bearers was furnished to the District Registrar. After the removal of the office bearers of plaintiff society, they have no right to conduct election on 25.09.2016 and the so-called election is void and have no right to file the above suit for declaration against extraordinary general body meeting or conduct election held on 04.09.2016. The petitioners/defendants 1 to 21 contended that they challenged the so-called meeting of plaintiff association dated 25.09.2016 in O.S.No.211 of 2016 before the learned Sub Court, Theni, wherein there is no interim order granted.

20.It was further contended by the petitioners/defendants 1 to 21 that they removed the office bearers of the plaintiff association from their basic membership of the society. Hence, they cannot represent the plaintiff association in filing the suit or challenging the resolutions of society. They further contended that if S.V.Subramanian is aggrieved by removal of membership, he cannot challenge the resolution in the name of plaintiff association. <https://hcsrecor.com/hcsrecor/> can file a suit in his individual name. It was further contended by the petitioners/ defendants that contentions in Interlocutory Application are subject matters to be decided in



the main suit and it cannot be adjudicated in I.A.No.391 of 2016 which is amounting to deciding the suit itself.

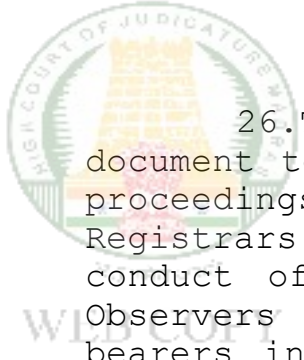
21. In the adjudication of Interlocutory Application, the respondent/plaintiff filed 37 documents in support of their claim and for grant of interim injunction. The petitioners/defendants filed no single document to prove their defence. The trial Court as well as the 1st appellate Court accepted the case of the respondent/plaintiff based on documents marked as Exs.P1 to P37 that the plaintiff association has been functioning under the Presidentship of S.V.Subramanian.

22. The plaintiff association convened the meeting on 25.09.2016 after following the rules and procedures under the bye law of the plaintiff association, majority of members viz., 348 members participated in the said meeting, signed the attendance, therefore, new members alleged by the defendants is false and assigning membership Nos.1/16 to 141/16 to them by the defendants is not in the practice of the plaintiff association. By the conduct of the petitioners/defendants 1 to 21 South Indian Bank, Bodi, froze the account of plaintiff association preventing transaction in its account.

23. The trial Court as well as the 1st appellate Court found that Exs.P4, P5 and P6 proved that S.V.Subramanian is holding the post of President of plaintiff association and resolution passed to that effect. The trial Court also found that Exs.P19, P20 and P21 revealed the election of new office bearers and among them S.V.Subramanian was elected as President of plaintiff association as per the bye law.

24. The trial Court as well as the 1st appellate Court also rejected the contention of the petitioners/defendants that reliefs claimed in the suit are not maintainable after 25.09.2016 as not acceptable since it is clear from the documents filed by the plaintiff association that S.V.Subramanian and his office bearers are administering the plaintiff association.

25. The respondent/plaintiff filed Ex.P1 bye-law of the association, Ex.P2 is 56th extraordinary general body meeting report, Ex.P4 attendance register of general body meeting held on 31.07.2016, Ex.P6 minutes book dated 28.08.2016, Ex.P5 resolution dated 27.09.2015, Ex.P15 in the meeting held on 25.09.2016, Exs.P19, P20 and P21 as resolutions to the above meeting and election, Ex.P23 shows that S.V.Subramanian is the elected President presently administering the plaintiff association and Ex.P24 subscription receipt. From the above documents it is inferred that the plaintiff association is presently administered by S.V.Subramanian as its President. There is no contra document filed by the petitioners to disprove the same.



26.The petitioners/defendants have not filed any single document to the alleged meeting held on 04.09.2016. Ex.P22 is the proceedings of the District Registrar appointing two Sub-Registrars of Kadamalaikundu and Chinnamanur as Observers for the conduct of meeting on 25.09.2016. Ex.P26 is the report of the Observers to the District Registrar after election of office bearers in the said meeting held on 25.09.2016. Minutes book of the said meeting reveals that 348 members had participated as per Ex.P15. The document containing elected office bearers was signed by the Observers appointed by the District Registrar.

27.The extraordinary general body meeting dated 09.07.2016, appointing M.G.Ashok Kumar as Convener, election of office bearers on 04.09.2016 meeting claimed by the petitioners/ defendants 1 to 21 which is disproved under Exhibit-P10 filed by the respondent/plaintiff and that the publication made by the petitioners/ defendants in "Madurai Mani" is not in existence. As per Clause-15 of the bye-law of the plaintiff association, notice for meeting is by post or affixture in the notice board of the association. But the procedure either in sending ordinary post or affixture of notice in the Notice Board of the plaintiff association was not adhered to. No such notice was affixed in the Notice Board or served to the members directly.

28.While deciding the question whether if the relief of interim injunction granted would cause irreparable loss to the defendants, the trial Court as well as the first appellate Court found that in view of interference by the defendants in the day-to-day administration of the plaintiff association by freezing the bank account business of members and administration of plaintiff association would be seriously affected as evident from Exs.P28, P36 and P37. The trial Court rightly came to the conclusion that prima facie case and balance of convenience in favour of the plaintiff association and allowed the petition for injunction.

29.The learned 1st Appellate Court after elaborate discussion, reference and consideration of the pleadings, evidence both oral and documentary dismissed the appeal by order dated 02.04.2018 holding that prima facie case and balance of convenience for grant of injunction is in favour of the respondent/plaintiff association and also dismissed the appeal by order dated 02.04.2018 holding that prima facie case and balance of convenience for grant of injunction is in favour of the respondent/plaintiff association.

30.I heard Mr.R.Suriyanarayanan, learned counsel for the petitioners and Mr.Isaac Mohan Lal, learned Senior Counsel for the respondents in both the Civil Revision Petitions and perused the



31. None of the grounds raised in the above civil revision petitions are borne out by records, no document is filed before the trial Court to substantiate or defend their case. In the absence of any evidence or documentary proof for the alleged meeting, prior notice if any for alleged meeting as per bye law, conduct of election, election of office bearers, no election officer or observer, absence of any report for conduct of election by Election Officer, lack of quorum in the meeting, where Exs.P1 to P37 prove the election of present office bearers of plaintiff association and continuance of administration by resolutions, receipt for payment of membership subscription till date.

32. The respondent/plaintiff had filed 14 documents which are marked as Exs.P1 to P12 in I.A.No.392 of 2016 in O.S.No.76 of 2016. But the petitioners/defendants filed no single document to substantiate their defence.

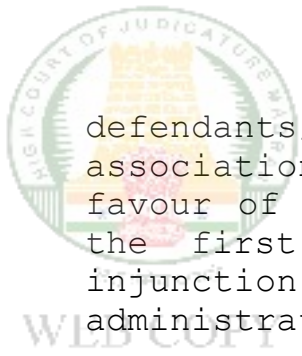
33. The respondent/plaintiff had filed 37 documents which were marked as Exs.P1 to P37 in I.A.No.391 of 2016 in O.S.No.75 of 2016. But the petitioners/defendants filed no single document for their defence.

34. The present office bearers were holding the office of President and Secretary for the previous term of office also in the plaintiff College Society.

35. In regard to the defence of the defendants/petitioners that some of the documents in the suit were after filing of suit which cannot be accepted, it is submitted that the previous office bearers of the plaintiff association were elected for the present term of office as per the procedure in the bye law which is confirmed by the documentary evidence, which is before the institution of the suit.

36. Election of the present office bearers of plaintiff association was in the presence of two Sub-Registrars, Kadamalaikundu and Chinnamanur, appointed by the District Registrar as observers in the presence of two Sub-Registrars the election was contested. The said two Observers after the election dated 25.09.2016 issued certificate for elected office bearers and submitted their report dated 26.09.2016 to the District Registrar, with their signatures that the respondent/plaintiff who are the present office bearers have been elected to the plaintiff association for the term 2016-2019.

37. The Bank account of the plaintiff association has been freezed at the instance of the defendants/petitioners which resulted non-payment of salary to the teachers and staff, expenses of day administration of college of students were unable to deposit fees and charges payable to the college. In view of obstruction and inconvenience made by the



defendants/petitioners in the plaintiff college society and its association, the prima facie case and balance of convenience is in favour of the respondent/plaintiff. So the trial Court as well as the first appellate Court concurrently granted the order of injunction in favour of the respondent/plaintiff for day-to-day administration of college committee as well as the Association.

38.As per the bye-law, there must be 21 days notice prior to the election and that was given by the plaintiff college society on 29.08.2016. The said notice was also served by post and also by affixture on the notice board of the plaintiff college society premises.

39.On perusal of the typed set of papers submitted by the respondent/plaintiff, it would show that the Form-VII submitted before the District Registrar, Periyakulam was registered on 28.03.2018.

40.In the result, both the Civil Revision petitions are dismissed and the impugned order dated 02.04.2018 in CMA.Nos.3 and 4 of 2017 on the file of the learned Sub Court, Theni, are confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Sub Judge, Theni.
2. The District Munsif-cum-Judicial Magistrate,
Bodinaickanur.

+1cc to Mr.R.Suriyanarayanan, Advocate Sr.No.72046
+2cc to Mr.B.Pandiaraj, Advocate Sr.No.71793,71794

VSV

VB/SKN/RSK/SAR2/16.07.2018/11P/6C

order made in
C.R.P. (MD) Nos.1196 and 1197 of 2018
and
CMP (MD) Nos.5047 and 5048 of 2018
09.07.2018