

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice C.SARAVANAN

O.S.A.No.374 of 2018
and
C.M.P.No.3280 of 2018

Bharathkumar K.Shah ... Appellant

Vs

1.P.Haridas
2.Manoj Kumar Sonthalia
3.Hitesh Kanodia
4.Ashok Kedia
5.Ashok Kumar Mudhra
6.Hari Krishna Jhaver ... Respondents

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w Clause 15 of Letters Patent against the order and decretal order dated 25.01.2018 made in Application No.7197 of 2017 in C.S.No.354 of 2017.

Application 7197 of 2017 : Application praying that this Hon'ble Court be pleased to implead the Applicant/proposed 6th defendant, Bharathkumar K Shah as the 6th defendant in C.S.No.354 of 2017

For Appellant ... Mr.R.Thiagarajan

For Respondents.. Mr.K.Shakesphere for R1
Mr.S.Vijayaraghavan for R2
No appearance for R3 to R6

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is directed against the order dated 25.01.2018 dismissing the Application in A.No.7197 of 2017 in C.S.No.354 of 2017.

2.The appellant, on the earlier occasion, filed a suit in CS No.334 of 2013, which is pending before this Court. There was subsequent suit in C.S.No.354 of 2017 filed by the first respondent before us. Pending suit, applications were filed in A.Nos.2898 and 2899 of 2017. Against the rejection of the interim applications filed by the first respondent, appeals were filed in O.S.A. Nos.208 and 209 of 2017. Accordingly, the following order was passed by consent:

6. Accordingly, the appeals are disposed of, with the following directions :

(i) The election to the Society shall be held under the supervision of Hon'ble Mr.Justice K.P.Sivasubramaniam, a former Judge of this Court.

(ii) Hon'ble Mr.Justice K.P.Sivasubramaniam, 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 extant 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 Hon'ble Mr.Justice K.P.Sivasubramaniam, after consulting all stakeholders. It is made clear, though, while consultations will be made, the final decision as to the date will be that of Hon'ble Mr.Justice K.P.Sivasubramaniam.

(iv) In so far as the Executive Council meeting is concerned, 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.

7. For his efforts, Hon'ble Mr.Justice K.P.Sivasubramaniam, will be paid an honorarium of Rupees 1,00,000/- (Rupees one lakh only). This amount will be paid by the Society.

8. In addition, the Society will also reimburse all incidental expenses, which may be incurred in carrying out the mandate of the Court.

9. Furthermore, we make it clear that any findings

and observations made in the impugned judgement will not come in the way of the final determination in the suit.

9.1. The findings in the suit, as is obvious, will be dependent on the evidence produced by the parties, and hence, will remain uninfluenced by observations recorded by the learned Single Judge in the impugned judgement and order.

9.2. Mr.Vijaya Raghavan, who appears for respondent No.1, says he does not dispute the said principle.

9.3. The said submission is taken on record.

10. The appeals are, accordingly, disposed of, in the aforementioned terms. Resultantly, pending applications shall stand closed. No costs.

3. Thereafter, the appellant filed an application in A. No.7197 of 2017 seeking to implead himself as a party defendant. That application was dismissed inter alia holding that inasmuch as he is not a member as of now, he cannot be termed as a proper and necessary party. Challenging the same, the present appeal has been filed.

4. Learned counsel appearing for the appellant submits that the order passed, though by consent, by the Division Bench of this Court in O.S.A.Nos.208 and 209 of 2017 dated 04.09.2017, will have a bearing on the pending suit filed by the appellant in C.S.No.334 of 2013. He is also a member of the family of the donor. Therefore, he is entitled to be impleaded as party defendant in the suit.

5. Learned counsel appearing for the second respondent submitted that as rightly held by the learned single Judge, inasmuch as the appellant is not a member as of now, he has no right to get himself impleaded in the suit.

6. We do not find any error in the order passed by the learned single Judge. The right of the appellant is yet to be adjudicated upon, which should only be done by the disposal of C.S.No.334 of 2013. As of now, he is not a member. In such view of the matter, the appeal is liable to be rejected. However, while doing so, we make it clear that C.S.No.334 of 2013 will have to be disposed of on its own merit and in accordance with law, without being influenced by the consent order passed in O.S.A.Nos.208 and 209 of 2017 dated 04.09.2017.

7.In the result, the original side appeal stands dismissed.
No costs. consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

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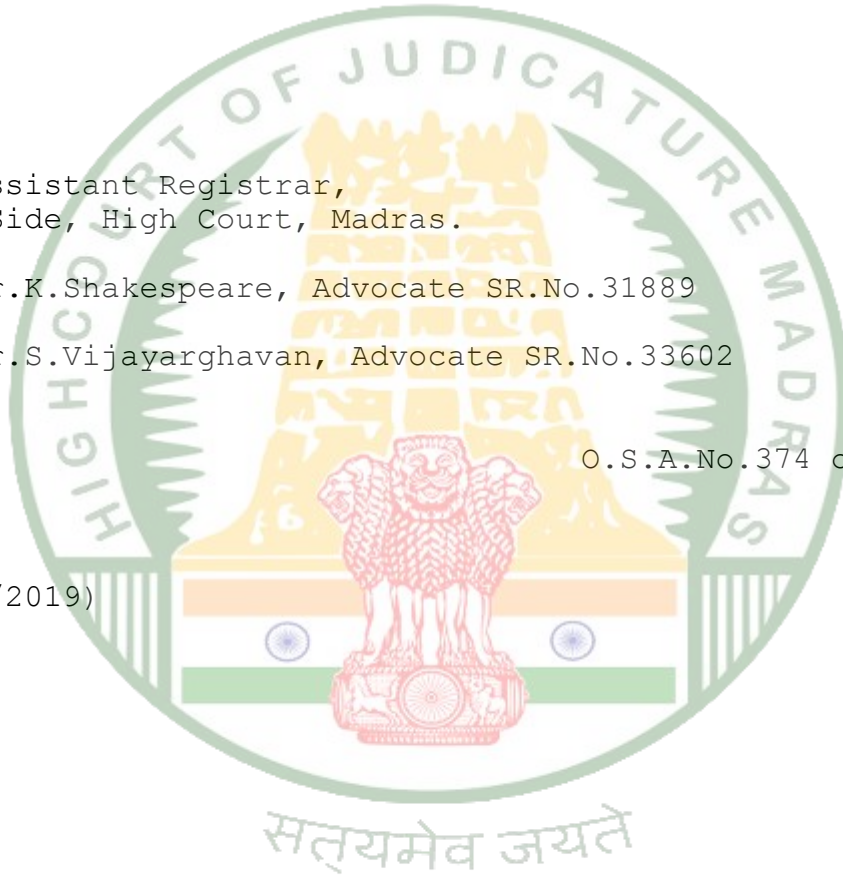
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.K.Shakespeare, Advocate SR.No.31889

+1cc to Mr.S.Vijayarghavan, Advocate SR.No.33602

O.S.A.No.374 of 2018

GJ (CO)
GMY (22/05/2019)



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