

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.302 of 2020

S.ChinnaGounder,
Member, Sree Sastha Nagar Manai Nila
Sondakkaragal Sangam,
Sooramangalam, Salem. .. Appellant

Versus

1.S.Bala Sundaram, Secretary,
Sree Sastha Nagar Manai Nila
Sondakkaragal Sangam,
Salem.
2.N.V.Manoharan, President,
Sree Sastha Nagar Manai Nila
Sondakkaragal Sangam,
Salem. .. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Order 41 Rule 1 of Civil Procedure Code praying to set aside the fair and decreetal order dated 02.11.2019 passed in I.A.No.1 of 2019 in O.S.No.497 of 2019 on the file of 2nd Additional District and Sessions Court, Salem.

For Petitioner : Dr.A.Thiyagarajan, SC
for Mr.S.Ramesh Kumar

For Respondents : No Appearance

O R D E R

Heard Dr.A.Thiyagarajan, learned Senior Counsel, for Mr.S.Ramesh Kumar, learned counsel for the plaintiff/appellant herein, through Video Conferencing due to COVID-19 pandemic. Although notice is served on the respondents, no one represented on their behalf to represent their case.

2. The plaintiff/appellant herein, being aggrieved by the fair and decreetal order dated 02.11.2019 passed in I.A.No.1 of 2019 in O.S.No.497 of 2019 by the learned 2nd Additional

District and Sessions Court, Salem, has filed this appeal.

3. Dr.A.Thiyagarajan, learned Senior Counsel, for Mr.S.Ramesh Kumar, learned counsel for the plaintiff/appellant herein, submitted that Sree Sastha Nagar Manai Nila Sondakkarargal Sangam, Salem, was a Society registered under the Tamil Nadu Societies Registration Act of 1975 in Serial No.24 of 1983, dated 21.02.1983. The Society was having its own by-laws and was administrated and governed under the same. The persons, who purchased plots in Sree Sastha Nagar alone, are members of the said Sangam and the plaintiff/appellant herein is one among them. The respondents 1 and 2 were the erstwhile Secretary and Joint Secretary of the said Sangam respectively.

4. While the matter stood as above, the respondents 1 and 2 were unilaterally declared themselves as Secretary and President of the said Sangam respectively and by styling themselves as such, without managing the Sangam properly, they started indulging in mismanagement and misappropriation of the income of the Sangam. In view of mismanagement, Sangam also lost its functioning and became defunct in the year 1991-199. Thereafter, there was no annual report submitted to the District Registrar for more than three years and renewed as per Section 16(3)(B) of the Tamil Nadu Societies Registration Act. Resultantly, the District Registrar, vide Circular No.46317/II/2010, dated 31.08.2010, cancelled the registration of the said Sangam citing a reason that the same was not functioning and has become defunct, and the same was also notified in Government Order No.10 of 2011, dated 16.03.2011, issued by the Government of Tamil Nadu. Therefore, registration of the said Sangam, having been cancelled by the above said G.O., is not existing in law.

5. Adding further, learned Senior counsel argued that once the District Registrar has cancelled the registration of the said Sangam vide order dated 31.08.2010, unless and until it is renewed as per Section 16(3)(B) of the Tamil Nadu Societies Registration Act, they cannot hold election or open Sangam. However, contrary thereto, first respondent circulated a notice dated 10.10.2019 under the caption "38th year Special General Body Meeting Invitation" informing the members, as if the same was resolved at the Administrative Committee Meeting, that a Special General Body Meeting will be convened on 03.11.2019 at 5 p.m., which will be presided over by the second respondent as President and the subject listed thereunder will be discussed and the resolutions will be passed thereon. The said notice was circulated within a group of persons said to have inducted as members, who are close associates and relatives of the respondents 1 and 2.

6. Learned Senior counsel further argued that finally the said Sangam was restored only on 18.11.2019 and in the meanwhile, the plaintiff/appellant herein has filed W.P.No.9946 of 2019 before this Court against the Principal Secretary, Commercial Taxes and Registration Department, The Inspector General of Registration and The District Registrar (West), Salem, to consider the application filed by the Sangam requesting not to restore the Sangam. Pending writ petition, the plaintiff/appellant herein and other members of the cancelled Sangam formed a similar Sangam in the same name "Sree Sastha Nagar Manai Nila Sondakkarargal Sangam" and applied for registration of the same to the District Registrar, but, the District Registrar, vide letter dated 21.03.2019, returned the application on the ground that application seeking restoration of earlier cancelled Sangam is pending.

7. When the matter stood as above, learned Senior counsel argued, notice dated 10.10.2019 issued by the first respondent styling himself as Secretary of the Sangam to hold an election for the said Sangam on 03.11.2019 has no legal validity and cannot stand to legal scrutiny. Hence, the plaintiff/appellant herein filed a suit praying;

(a) to declare the notice dated 10.10.2019 circulated by the first defendant representing Sree Sastha Nagar Manai Nila Sondakkarargal Sangam as its Secretary to conduct the election for administrative committee members of the Sangam as null and void;

(b) to pass an order of permanent injunction against the defendants 1 and 2 and their men from conducting any election for the office of administrative or executive committee member of the Sree Sastha Nagar Manai Nila Sondakkarargal Sangam, Salem, on 03.11.2019 or any other date;

(c) to direct the defendants 1 and 2 to submit proper accounts for the income and assets of the Sree Sastha Nagar Manai Nila Sondakkarargal Sangam, Salem, from 1992 to upto date;

(d) to appoint a Special Officer under Section 34-A(1) of Tamil Nadu Society Registration Act to take over the administration and management of Sree Sastha Nagar Manai Nila Sondakkarargal Sangam till new administrative or executive committee members are elected legally;

However, learned trial Court, without even addressing the issue as to whether defunct Sangam has been restored or not, wrongly dismissed I.A.No.1 of 2019 on 02.11.2019. Pursuant to the order

of dismissal dated 02.11.2019, it is submitted, election was conducted on 03.11.2019 and therefore, election conducted on 03.11.2019 is not legally valid, as the cancelled Sangam was not restored till 03.11.2019 and it was restored only on 18.11.2019, hence, learned trial Court ought to have directed the respondents 1 and 2 not to hold election as the Sangam itself was defunct. Thus, on this basis, learned Senior counsel prayed for setting aside the impugned fair and decreetal order passed by the learned trial Court in I.A.No.1 of 2019 in O.S.No.497 of 2019, dated 02.11.2019.

8. I also find merit on the above said submissions. Admittedly, Sree Sastha Nagar Manai Nila Sondakkarargal Sangam, Salem, was a registered Society under the Tamil Nadu Societies Registration Act of 1975 in Serial No.24 of 1983, dated 21.02.1983. However, there was no proper maintenance of accounts and it has also lost its functioning after 1991-1992 and became defunct. Thereafter, no annual report was submitted to the District Registrar for more than three years and it was also not renewed as per Section 16(3)(B) of the Tamil Nadu Societies Registration Act. Therefore, the District Registrar, vide Circular No.46317/I1/2010, dated 31.08.2010, cancelled the registration of the said Sangam citing a reason that the same was not functioning and has become defunct. This was also notified in the Government Order No.10 of 2011, dated 16.03.2011.

9. While so, surprisingly, without taking note of the cancellation of Sangam by the District Registrar on 31.08.2010, first respondent has wrongly issued a Notification dated 10.10.2019 under the caption "38th year Special General Body Meeting Invitation " informing the members, as if resolved at the Administrative Committee Meeting, that a Special General Body Meeting will be convened on 03.11.2019 at 5 p.m., which will be presided over by the second respondent as President and the subject listed therein will be discussed and resolution will be passed thereon. Moreover, when the said Sangam became defunct in the year 1991-1992 and lost its legal entity and functioning after 1991-1992 and that finally restoration of said Sangam has taken place only on 18.11.2019, learned trial Court, in my considered opinion, has committed grave infirmity and error in not noticing the vital fact that the said Sangam itself was defunct when the first respondent issued Notification dated 10.10.2019 to conduct an election on 03.11.2019, as the cancellation of the registration of the Sangam by the District Registrar on 31.08.2010 was in force till it was restored on 18.11.2019. In view of the cancellation of the registration of the Sangam, there cannot be any election held to the office bearers, for, in the eye of law, there is no Sangam in existence, whereas ironically election has been held to the office bearers of the defunct Sangam. Consequently, any action

or development took place after 10.10.2019 will have no legal validity. This vital legal issue has been totally overlooked by the Court below, therefore, the impugned order is unsustainable in law. Hence, for the reasons mentioned supra, the impugned fair and decreetal order passed by the learned trial Court is set aside. Consequently, the Civil Miscellaneous Appeal stands allowed with costs. Consequently, connected CMP.No.2090 of 2020 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

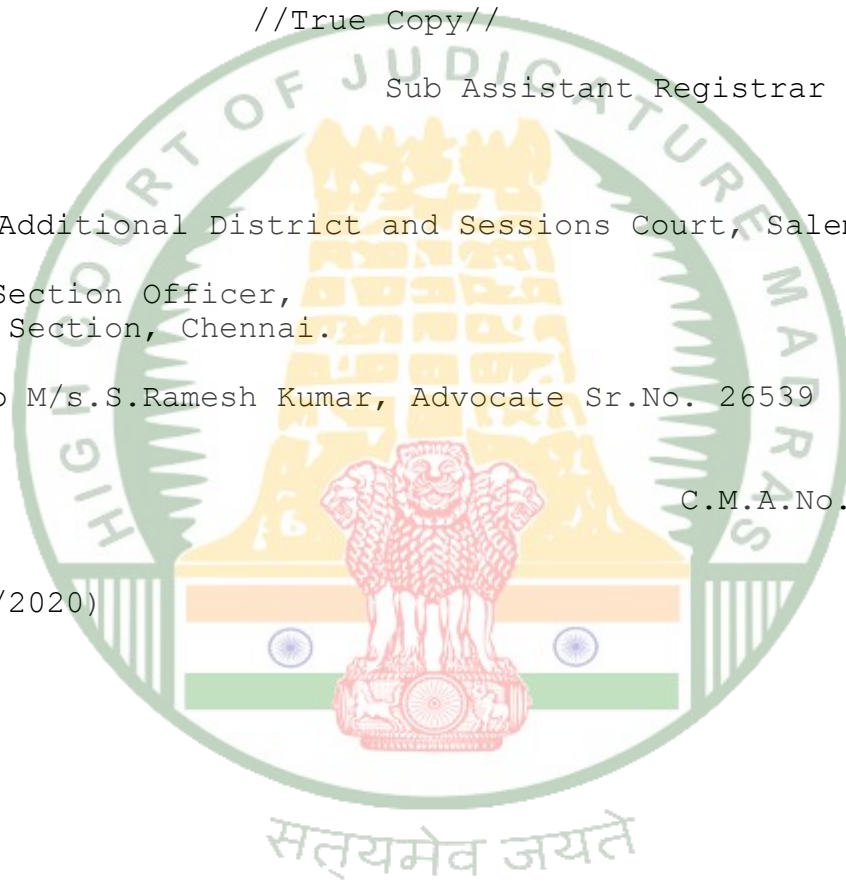
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To

1. The Additional District and Sessions Court, Salem.
2. The Section Officer,
V.R. Section, Chennai.

+1 cc to M/s.S.Ramesh Kumar, Advocate Sr.No. 26539

C.M.A.No.302 of 2020

NMI (CO)
RMP (29/10/2020)



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