

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.No.4975 of 2011
and
M.P.Nos.1 & 2 of 2011

Tamil Nadu State Indian Union Muslim League,
represented by its General Secretary,
K.A.M.Muhammed Abubacker,
36, Maraikair Labbai Street,
Mannady, Chennai - 600 001. ... Petitioner

Vs.

1. M.G.Dawood Miakhan
2. K.M.Khader Mohideen
3. Tamil Nadu State Indian Muslim League,
represented by its State Secretary,
A.Mohammed Ismail,
S/o.Late A.K.Rafayee,
No.106/120, Vepery High Road,
Periamet, Chennai - 600 018. ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 03.12.2011, passed in unnumbered memo dated 09.04.2010 in O.S.No.3104 of 2010 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.Ashok Kumar
for Mr.M.Sundar
For Respondent 1 : Mr.A.Palaniappan
For Respondent 2 : Mr.K.Ganesan

O R D E R

The first respondent herein originally filed a suit against the second and third respondents herein in C.S.No.284 of 2006 on the file of this Court and subsequently, the suit was transferred to the City Civil Court, Chennai (I Additional Judge, City Civil Court, Chennai) and re-numbered as O.S.No.3104 of 2010. After service of summons, the petitioner herein filed

vakalat along with a memo through his counsel to permit the petitioner to represent the second defendant in the said suit. The said memo was rejected by an order dated 01.07.2010 and as against the said order, the petitioner herein filed a revision before this Court in C.R.P.No.3321 of 2010. After hearing the said revision, this Court by an order dated 04.03.2011, directed the trial Court to hold a fact finding enquiry and decide who is the competent person to represent the second defendant in the above suit. Later, the matter went to the trial Court and in order to prove their respective contentions as to who is the competent person to represent the second defendant in the suit, on the side of the petitioner herein, the petitioner examined himself as XW1 and on his side nine documents were marked as Exs.X1 to X9. On the side of Mr.Mohammed Ismail, who is shown in the cause title as representing as State Secretary of the second defendant in the suit was examined as YW1 and on his side Exs.Y1 to Y3 were marked. After considering the oral and documentary evidence, the trial Court by an order dated 03.12.2011, once again rejected the memo filed by the petitioner holding that the petitioner herein is not a competent person to represent the second defendant political party. Challenging the said order passed by the trial Court, the petitioner is once again before this Court with this revision.

2. The learned counsel appearing for the petitioner would submit that the second defendant Tamil Nadu State Indian Muslim League is a political party and the same is duly represented by the petitioner herein being the General Secretary. The first respondent/plaintiff filed a collusive suit against the second and third respondents herein showing his own man Mr.A.Mohammed Ismail as the State Secretary of the second defendant. Therefore, when summons were served, the petitioner herein engaged a counsel, who filed vakalat along with a memo before the trial Court to permit him to represent the second defendant as if he is the General Secretary of the second defendant and that Mr.A.Mohammed Ismail has no locus standi to represent the second defendant.

3. According to the learned counsel, earlier, the trial Court rejected the memo filed by the petitioner and the petitioner approached this Court and this Court has directed the trial Court to record evidence and decide the matter as to who is the competent person to represent the second defendant in the said suit. The petitioner himself was examined as XW1 and he has marked 9 documents to prove that he is the competent person to represent the second defendant. The learned counsel further submitted that the third respondent/second defendant represented by its State Secretary Mr.A.Mohammed Ismail has no locus standi and he is not the competent person.

4. Further, according to the learned counsel though the petitioner has filed various documents, the trial Court failed to consider the fact that the petitioner is the competent person to represent the second defendant but in turn rejected the memo and therefore the petitioner is before this Court seeking to set aside the said order and allow the revision.

5. The learned counsel appearing for the first respondent would submit that the second respondent herein / first defendant in the suit claims himself to be the President of the third respondent / second defendant political party and at the same time Member of Parliament of the D.M.K. party. The second respondent had maintained dual stand and he is member of two political parties at the same time and also holding the post of Member of Parliament representing the D.M.K. party and equally claims himself to be the president of the Tamil Nadu State Indian Muslim League. There was difference of opinion in the third respondent political party with regard to the dual stand taken by the second respondent who is claiming as a member of the D.M.K. party as well as a member of the third respondent political party.

6. The learned counsel for the first respondent would further submit that the second respondent had violated various provisions of the bye-law in as much as being a member of two political parties simultaneously, which is clearly prohibited by Rule 9(aa) of the bye-law of the third respondent political party. Therefore, the first respondent filed the suit against the second and third respondent to declare the act of removing the first respondent from the primary membership of second defendant by the first defendant on 11.12.2004 is illegal, unlawful and has no binding force and unenforceable against the first respondent and also for a permanent injunction restraining the second respondent from using the name of the Indian Union Muslim League Party in the prefix or suffix or the flag of the said Indian Union Muslim League or use its symbol ladder in any meeting or rally or for any canvassing for votes in the forth coming Assembly Election in the month of May, 2006 or subsequently. As the second respondent acted against the bye-law the first respondent filed the suit.

7. The learned counsel appearing for the second respondent would submit that the first respondent filed the suit against the wrong person and wrongly shown in the cause list. The third respondent represented by its State Secretary Mr.A.Mohammed Ismail has no locus standi to represent for the third respondent. The petitioner herein is the only competent person to represent the third respondent.

8. The learned counsel further submitted that even at the first instance, after receiving the summon, the petitioner herein engaged a counsel by filing vakalat along with the memo that he is the competent person to represent and also produce documents and further he would submit that the trial Court failed to consider the oral and documentary evidence and erroneously rejected the memo.

9. I have heard the learned counsel on either side and also perused the entire records carefully.

10. It is seen that the first respondent herein filed the suit against the second and third respondents in O.S.No.3104 of 2010 on the file of the City Civil Court, Chennai (I Assistant Judge, City Civil Court, Chennai). After the service of summons, the petitioner herein engaged a counsel and filed vakalat along with the memo to permit him to represent the third respondent herein / second defendant in the suit.

11. The trial Court by an order dated 01.07.2010, rejected the said memo and against the said order, the petitioner herein filed a revision before this Court in C.R.P.No.3321 of 2010. In the said revision, this Court, by an order dated 04.03.2011, has set aside the order of the trial Court and directed the trial Court to hold a fact finding enquiry to decide who is the competent person to represent the second defendant in the suit. Thereafter, before the trial Court, both the parties adduced both oral and documentary evidence and after considering the oral and documentary evidence, the trial Court rejected the memo filed by the petitioner. Therefore, the petitioner has filed the present revision before this Court.

12. Though the first respondent has filed the suit against the second and third respondents for a declaration to declare that the act of removing the first respondent from the primary membership of second defendant by the first defendant on 11.12.2004 is illegal and unlawful and has no binding force and unenforceable against the first respondent and also for a permanent injunction restraining the second respondent from using the name of the Indian Union Muslim League Party in the prefix or suffix or the flag of the said Indian Union Muslim League or use its symbol ladder in any meeting or rally or for any canvassing for votes in the forth coming Assembly Election in the month of May, 2006 or subsequently, this Court has directed the trial Court to find out who is the competent person to represent the second defendant in the suit. The first respondent / plaintiff has shown that the second defendant is represented by the State Secretary Mr.A.Mohammed Ismail. But the petitioner has stated that Mr.A.Mohammed Ismail is the man of the first respondent/plaintiff and that in order to get a

collusive order, they have shown Mr.A.Mohammed Ismail as the State Secretary and that he is the competent person to represent the second defendant. The petitioner filed the memo that he is the competent person to represent the third respondent / second defendant and not Mr.A.Mohammed Ismail. Though normally the party has to file affidavit with supporting documents, but in this case, they simply filed the memo. By an order of this Court, the trial Court conducted enquiry and passed a detailed order rejecting the memo. Therefore, the competency of passing a detailed order in the memo cannot be questioned because the trial Court has followed the directions of this Court made in C.R.P.No.3321 of 2010.

13. Now on seeing the merit of the order passed by the trial Court, the trial Court has elaborately discussed the oral and documentary evidence produced by both the parties and this Court also has carefully gone through the entire materials placed before the trial Court. As the petitioner has not proved that he is the competent person to represent the third respondent herein / second defendant in the suit, the trial Court has rightly held that the documents produced by the petitioner are not enough to prove that he is the competent person to represent the third respondent / second defendant. From all the materials available on record and the bye-laws, the trial Court has rightly found that the first respondent is running the administration with the said Mr.A.Mohammed Ismail who has been shown in the cause title of the suit as the State Secretary of the third respondent/second defendant. Whereas the second respondent / first defendant is running the administration with the petitioner Mr.K.A.M.Muhammed Abubacker as General Secretary. As rightly held by the trial Court, there is no documentary evidence on either side to show that both the parties were elected in accordance with the bye-law of the said political party. Though, both the parties were not elected in accordance with the bye-law but however Mr.A.Mohammed Ismail and his supporters were running the administration even from 2008 onwards, whereas, the second respondent/first defendant Mr.K.A.M.Muhammed Abubacker and his supporters have not challenged the administration run by the first respondent / plaintiff and his supporters in the manner known to law and the petitioner also has not challenged the working of the Mr.A.Mohammed Ismail as the State Secretary of the Tamil Nadu State Indian Union Muslim League, the political party, in the manner known to law.

14. Therefore, under these circumstances, the crux of the revision is that whether the order passed by the trial Court rejecting the memo and holding that Mr.A.Mohammed Ismail is the competent person to represent the third respondent/second defendant in the suit and that the petitioner is not a competent

person to represent the third respondent/second defendant in the suit is valid.

15. Though the petitioner has not filed any affidavit and petition to decide the issue of who is the competent person has filed a memo as per the direction of this Court in C.R.P.No.3321 of 2010, the trial Court elaborately conducted enquiry and considering the oral and documentary evidence rejected the memo filed by the petitioner. While exercising the revisional jurisdiction the revision Court cannot sit over the annals of the appellate Court and exercise the powers of the appellate Court and revisit the entire materials and the revision Court can scrutinies the records and the order passed by the trial Court and if the order of the trial Court suffered with perversity in the appreciation of any of the materials, the revision Court can interfere with that and correct the order of the trial Court. While exercising revisional jurisdiction under Article 227 of the Constitution of India, this Court does not find any perversity in the order passed by the trial Court. In these circumstances, as there is no merit in the revision, the revision is liable to be dismissed and accordingly dismissed.

16. As already the first respondent has filed the suit against the second and third respondents, if the petitioner has got any grievances, he can always implead himself as a party to the suit if he is able to substantiate that he is either a necessary party or a proper party in the said suit as one of the members of the political party and also if he has got any sufficient material regarding the resolution / agenda in which he has been appointed as the General Secretary. Further, the materials produced before the trial Court in the memo, the materials are not sufficient to establish that he is the competent person to represent the second defendant. If at all he has got any sufficient material or if at all he is really aggrieved with, he can very well file an application to implead himself as one of the parties to the suit and contest the same and not by way of filing any memo.

17. In the result, the civil revision petition is dismissed with the above liberty given to the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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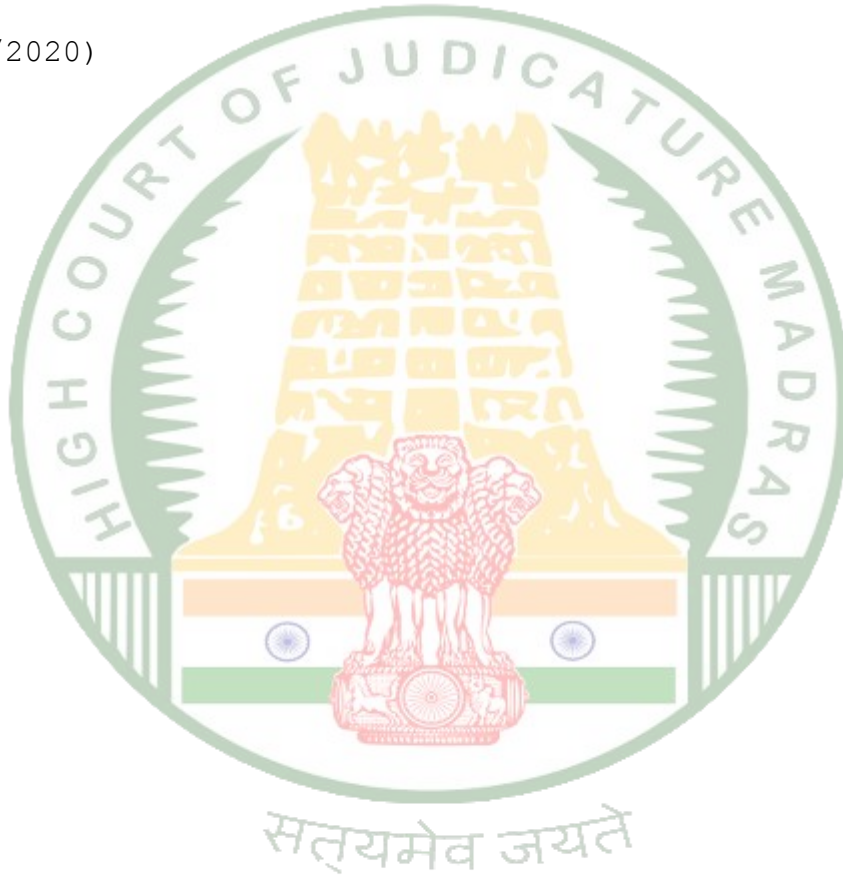
Sub Assistant Registrar

kk
To
The I Assistant Judge,
City Civil Court, Chennai.

+1 cc to M/s.A.Palaniappan, Advocate Sr.No. 30586

C.R.P.No.4975 of 2011
and M.P.Nos.1 & 2 of 2011

MR(CO)
RMP(28/09/2020)



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