

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P(PD).No.1999 of 2015

1. Perilovanpatti Hindu Nadar's (Madras)
Uravinmurai (Regd.No.88/1967),
Cavery Lodge, No.16, Cudappan Rangiah
Street, Periamedu, Chennai 600 003.
rep. by its Secretary , Mr.A.N.S. Jayapal.

2. Mr. A.N.S. Jayapal Nadar,
S/o. Late Srinivasagam Nadar

... Petitioners

Vs.

Mr. Thangamuthu

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the order passed in I.A.No.10755 of 2014 in O.S.No.230 of 2014 dated 02.03.2015 on the file of XII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.T. Thigeshwaran
For Respondent : Mr.R. Manivannan

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioners' application filed under Order VII Rule 11 CPC to reject the plaint.

2. The respondent herein filed a suit in O.S.No.230 of 2014 on the file of the XII Assistant City Civil Court, Chennai, to declare the amended bye-law of the first defendant Society, dated 28.10.1979 as null and void and to declare the resolution dated 19.12.2010 passed by the General Body of the first defendant removing the plaintiff from the basic membership of the first defendant Society as null and void. In the above suit, the petitioners/defendants filed an application under Order VII Rule 11 CPC to reject the plaint on the ground that the plaint

does not disclose the cause of action. That apart, the suit is also barred by limitation. The trial Court, after considering all the relevant materials, by an order dated 02.03.2015 , dismissed the application. Now, challenging the same present revision has been filed.

3. The learned counsel for the petitioners would submit that the bye-law of the first petitioner society has been amended in the year 1979 itself. Now, that amendment cannot be challenged in the suit filed in the year 2014, which is totally barred by limitation. That apart, the plaintiff cannot challenge the amendment by filing a suit and the only remedy available to the plaintiff is to approach the statutory authorities, under the Tamil Nadu Societies Registration Act. The Court below, without considering the same in proper perspective, dismissed the application mechanically.

4. Per contra, the learned counsel for the respondent would submit that in the original bye-law, there is no removal of member, subsequently, in the year 1979 bye-law has been amended providing the removal of member. Thereafter, the petitioner was removed from the basic membership of the first defendant society only on 19.12.2010 and on that date, the cause of action arises for the plaintiff to challenge the amendment and hence, the suit is not barred by law. The amendment made in the bye-law can only be challenged before the Civil Court and the Registrar of Societies has no jurisdiction to decide the issue.

5. I have considered the rival submissions and perused the materials available on records carefully.

6. The petition to reject the plaint has been filed on the ground that the suit does not disclose the cause of action and it is also barred by limitation. To decide the petition filed under Order

VII Rule 11 CPC, the averments made in the plaint are alone germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at this stage, and the question as to whether the suit is barred by limitation or not depends upon the facts and circumstances of each case, and the Court has to consider the averments made in the plaint and the Court is not entitled to consider the defendants' case.

7. From the perusal of the plaint, it could be seen that the plaintiff has been removed from the society on 19.12.2020 pursuant to the amended bye-law dated 28.10.1979. Hence, according to the plaintiff, the cause of action arises for filing the suit only on the date of his removal. Hence, it is not barred by limitation. Further, it is stated under Section 36(4) & (5) of the Tamil Nadu Societies Registration Act 1975, the plaintiff can only approach the Civil Court. A meaningful reading of the plaint prima facie disclose a cause of action. Whether the suit is barred by limitation is the mixed question of law and it is to be decided at the stage of trial and at this stage, the plaint cannot be

rejected. Considering all the circumstances, the trial Court rightly dismissed the application. I find no illegality or irregularity in the order passed by the Court below and I find no merit in the revision.

8. Accordingly, the Civil Revision Petition is dismissed. However, considering the fact that the suit is pending from the year 2014, the trial Court is directed to proceed with the suit and dispose the same within a period of six(6) months from the date of receipt of a copy of this order, after giving opportunity to both the parties, on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

05.02.2020

Index:Yes/No

Internet:Yes

Speaking/Non-speaking order
mrp

To

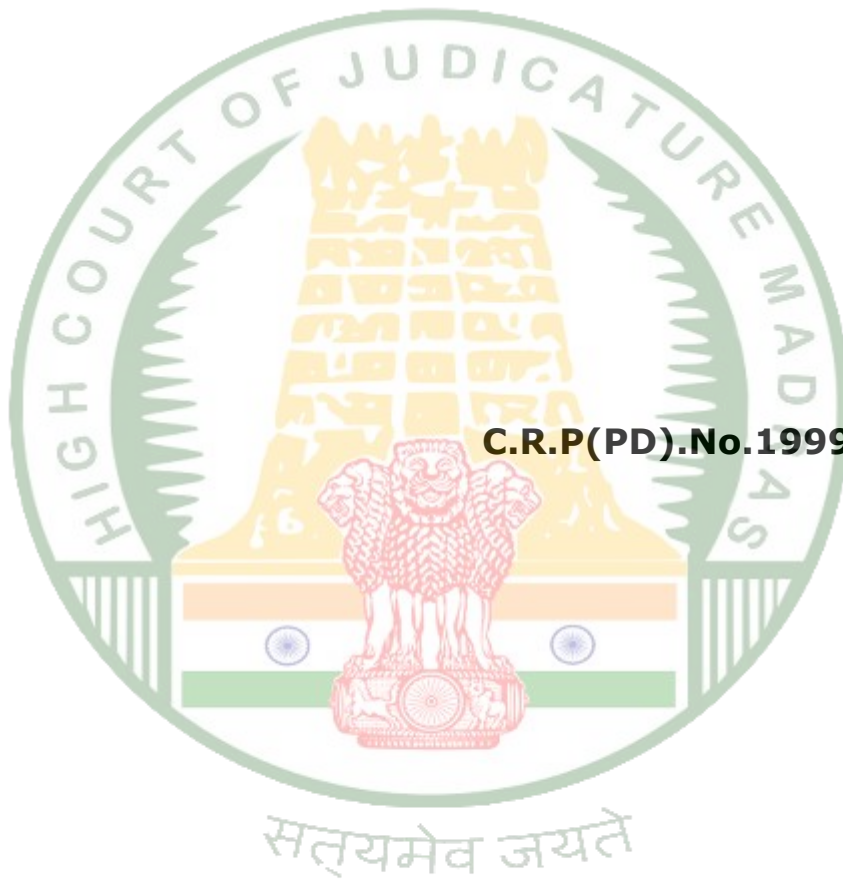
XII Assistant Judge,
City Civil Court, Chennai.

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V.BHARATHIDASAN, J

mrp



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