



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP (MD) Nos. 465 & 466 of 2020

and

CMP (MD) No. 2875 & 2876 of 2020

1. S. David Stephen
2. D. Paulraj
3. M. Pitchai
4. M. S. Densingh Raja
5. D. Paulraj
6. T. Jeyaveeran
7. D. Gabriel
8. D. Joseph
9. S. Thomas Walker
10. G. Yoseph
11. J. Isaac Devamani
12. E. Jeyasekar Elizha
13. D. Simon Mani

.. Petitioners/petitioners/
Defendants 5 to 8, 13, 15 to 22
in all the CRPs.

Vs.

1. C. M. S. Evangelical Suvi David Memorial Higher
Secondary School Committee,
Karisal, Regn. No. 11/1967, New No. 62/1982
rep. by its Secretary, C. Jebastin
Karisalpatti, Ambasamuthiram Taluk,
Tirunelveli District. ... 1st Respondent/Plaintiff
2. The District Registrar,
Cheranmadevi District Registration,
Cheranmadevi,
Tirunelveli District.
3. The District Educational Officer,
Cheranmadevi,
Tirunelveli District.
4. The Chief Educational Officer,
Tirunelveli District.



5.The State of Tamil Nadu,
rep.by the District Collector,
Collectorate,
Kokirakulam,
Tirunelveli - 9.

... Respondents 2 to 5/Respondents 2 to 5/
Defendants 1 to 4

6.S.R.C.Devapitchai ... Respondent 6/Respondent 6/Defendants 14

7.K.Samuel

8.J.David

9.K.Dhasan

10.D.David

... Respondents 7 to 10/Respondents 9 to 12/
Defendants 9 to 12

11.J.Milton Jebamanickam

12.D.Immanuel

13.S.William Packianathan

14.T.Ranius Samuel ... Respondents 11 to 14/Respondents/
Defendants 23 to 26 in all the CRPs.

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the orders passed by IV Additional District Court, Tirunelveli in I.A.Nos.3 and 1 of 2019 in O.S.No.86 of 2018 dated 30.10.2019 and set aside the same.

For Petitioners : Mr.S.Xavier Rajini

For R1 : Mr.M.S.Sureshkumar

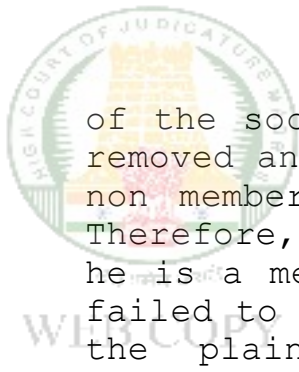
For R2 to R5 : Mr.M.Jeyakumar

Additional Government Pleader
in all CRPs.

COMMON ORDER

The first respondent herein as plaintiff has filed a suit against the petitioners and respondents 2 to 14 herein in O.S.No.86 of 2018 on the file of IV Additional District Court, Tirunelveli. During pendency of the suit, the plaintiff has filed an application under Order 6 Rule 17 and Section 151 CPC to amend the plaint and the defendants 5 to 8, 13, 15 to 22 filed an application under Order 7 Rule 11(a) CPC to reject the plaint on the ground of non disclosure of cause of action. The trial judge heard both the applications and dismissed the application filed by the defendants 5 to 8, 13, 15 to 22 to reject the plaint and allowed the application filed by the plaintiff to amend the plaint. Challenging the respective orders, these Civil Revision Petitions have been filed.

2.The learned counsel for the petitioners would submit that first of all the plaintiff, who has filed the suit is not a member



of the society on the date of filing of the suit. Earlier he was removed and subsequently he was readmitted as a member only by the non members of the society and not the members of the society. Therefore, the contention of the first respondent/plaintiff that he is a member of the society is not acceptable. The trial Court failed to consider the said fact and allowed the petition to amend the plaint. Further, the amendment petition is barred by limitation and therefore, it ought not to have been allowed. The plaintiff has originally filed the suit for declaration and permanent injunction restraining the defendants 5 to 22 therein from interfering with the day-to-day activities of the society. But the subsequent amendment they have sought for in the prayer was not existed on the date of filing of the suit. Therefore, the suit cannot be amended and if the amendment is allowed, the entire character of the suit will be changed. Therefore, the order passed by the trial Court in I.A.No.1 of 2019, amending the plaint is liable to be set aside.

3.The defendants 5 to 8, 13, 15 to 22 have filed a petition under Order 7 Rule 11(a) CPC to reject the plaint on the ground of non disclosure of cause of action. The learned counsel for the petitioners would submit that the plaint has not disclosed any cause of action and therefore, the plaint has to be rejected. The contention of the petitioners is that the first respondent/plaintiff is not a member of the society on the date of filing of the suit and therefore, the plaint has to be rejected. The trial Court has failed to consider the said facts and dismissed the said petition, which warrants interference of this Court.

4.The learned counsel for the first respondent would submit that the respondents 6 to 14 are the members of the society and even this Court had already directed the trial Court to dispose of the suit within a period of eight months, but the petitioners have not cooperated for the disposal of the suit. The defendants have filed written statements and issues have already been framed and trial also commenced and PW1 was cross examined by the defendants 1 to 4. However, despite a direction given by this Court to dispose of the suit within a stipulated time, only to protract the proceedings, the petitioners have filed petitions one after another. The trial Court has considered the entire aspects and rightly dismissed the petition filed for rejection of plaint and allowed the petition to amend the plaint.

5.Heard the learned counsel appearing on either side and perused the entire materials available on record.

6.Admittedly, the first respondent/plaintiff filed a suit in O.A.No.86 of 2018 on the file of IV Additional District Court,

<https://heservices.ecourts.gov.in/heservices/>



Tirunelveli for the relief of declaration and permanent injunction, restraining the defendants therein not to interfere with the administration of the society. The defendants have filed written statement in the suit and issues were also framed and trial also commenced. PW1 was cross examined by the defendants 1 to 4.

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7. A careful reading of the plaint would show that the plaintiff has disclosed the cause of action. Therefore, the contention of the learned counsel for the petitioners is not acceptable and the plaint cannot be rejected on the ground of non disclosure of cause of action. Therefore, the civil revision petition filed by the petitioners in CRP(MD)No.465 of 2020 is liable to be dismissed.

8. In so far as the petition to amend the plaint is concerned, the learned counsel for the petitioners would submit that the first respondent/plaintiff is not the member of the society and therefore, he has no *locus standi* to file the suit. But the fact remains that the plaintiff was initially removed from the society and subsequently he was readmitted by the society. Whether the first respondent/plaintiff is the member of the society or not and he was earlier removed and readmitted by the non members of the society, are the factual disputes and that have to be decided only by examining the witnesses and also by production of the relevant documents.

9. Though it is stated by the petitioners that the amendment petition is barred by limitation, it is seen that the suit itself was filed in the year 2018. It is stated that subsequent to the removal of the first respondent/plaintiff, he was readmitted. But the contention of the petitioners is that he was readmitted only by the non members of the society and not by the members of the society and the said issue can be decided only after completion of trial. Further the limitation is concerned, it is not a pure question of law and it is only a mixed question of law. Under these circumstances, this Court cannot say that the amendment petition is barred by limitation. Further, the petitioners/defendants have already filed written statement. If the petition to amend the plaint is allowed, they can very well file additional written statement if necessary. If the amendment is not allowed, it will lead to multiplicity of proceedings and if the amendment is allowed, no prejudice would be caused to the defendants. Further, as per amended CPC, if the amendment is pre-trial, amendment can be allowed and only post trial, the amendment has to be restricted. Therefore, this Court does not find any perversity in the orders passed by the trial Court. Under these circumstances, these Civil Revision Petitions are liable to be dismissed and accordingly they are dismissed. The



petitioners/defendants are at liberty to take all their defence during trial. The trial Court is directed to decide the suit in accordance with law, uninfluenced by any of the observations made in this order. No costs. Consequently, CMP(MD)No.2875 & 2876 of 2020 are closed.

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Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

mj

To

The IV Additional District Court, Tirunelveli.

+1 CC to M/s.M.S.SURESH KUMAR, Advocate (SR-12055[F] dated 17/03/2020)

+1 CC to M/s.S.XAVIER RAJINI, Advocate (SR-12150[F] dated 17/03/2020)

+1 CC to M/s.SPL GP (SR-12283[F] dated 18/03/2020)

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DB(CO)

TR(14.05.2020) 5P 5C