

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2014

CORAM

THE HON'BLE MR.JUSTICE R.S. RAMANATHAN

APPLICATION No.5968 of 2013
in
C.S.No.710 of 2013

THE MODERATOR
THE CHURCH OF SOUTH INDIA
CSI SYNOD CENTRE NO.5,
WHITES ROAD,
ROYAPETTAH,
CHENNAI 14

.....Petitioner

RT.REV.DR.J.A.D.JEBACHANDRAN
BISHOP OF THOOTHUKUDI NAZARETH DIOCEASE
BISHOPS
HOUSE NO.11/32 T,
STATE BANK COLONY, THOOTHUKUDI 2

.....Respondent

The defendant is the applicant in the above Application. The applicant filed the above Application to reject the plaint in C.S.No.710 of 2013 on the ground that the suit is barred under Order XXIII, Rule 1(4) of the Civil Procedure Code and also not maintainable on the ground that leave under Order I, Rule 8 of the CPC was not obtained.

2. To appreciate the merits of the Application, the pleadings in the plaint have to be looked into:-

The respondent/plaintiff filed the suit for the following relief:-

(i) for a declaration that the order of suspension dated 03.04.2013 is *ultra vires* the Constitution of Church of South India, which has been clandestinely restored by the defendant by making the plaintiff withdraw the suit filed by the plaintiff earlier.

(ii) for a permanent injunction restraining the defendant his men or agent claiming under him from proceeding to constitute the Court of Synod without following the procedures contemplated in the Constitution of Church of South India against the plaintiff.

(iii) for Cost of the suit.

3. The allegations made in the plaint in brief for the purpose of this Application are that the plaintiff was elected, selected, appointed, consecrated, and installed as the First Bishop of Thoothukudi-Nazareth Diocese, during May 2006, and as such, he is the religious administrative Head of the Thoothukudi-Nazareth Diocese

and, has been discharging his duty as Bishop. Thoothukudi-Nazareth Diocese is a member of CSI Synod, which is the highest representative body of Church of South India. The defendant started interfering in the internal affairs of the Thoothukudi-Nazareth Diocese and therefore, the plaintiff filed a suit for declaration in O.S.No.64 of 2013 on the file of the Subordinate Court, Thoothukudi, to declare that the letter of the defendant/applicant dated 16.01.2013 as null and void and also obtained an order of injunction against the defendant from interfering with the functions of the plaintiff as Bishop by order dated 25.02.2013. Another suit in O.S.No.454 of 2013 was filed by Rev.Devasahayam, who was also aggrieved by the letter of the defendant/applicant, dated 16.1.2013 on the file of the XVI Assistant City Civil Court, Chennai, and he also obtained an order of injunction in that suit and that order was also made absolute. While so, the plaintiff received an intimation dated 29.1.2013 for the meeting of Executive Committee of the CSI Synod to be held on 25.2.2013 along with enclosures as Agenda and Minutes of the Synod Advisory Committee held on 22.08.2012. The plaintiff attended the meeting on 25.02.2013 and in that meeting, he asked for the particulars about the draft Minutes of earlier Executive Committee meeting to be confirmed at that meeting, which was not circulated as per the procedure and the Secretary of CSI Synod refused to divulge any information. According to the plaintiff, in the meeting held on

25.02.2013, the procedures as contemplated under the constitution of Church of South India were not followed and the Minutes of the said meeting have not also been circulated. However, the plaintiff received a letter of Communication dated 03.04.2013 by email sent by the defendant stating that the decision of the Executive committee to suspend the plaintiff from the post of Bishop of Thoothukudi-Nazareth Diocese for his disorderly behaviour at the meeting held on 25.02.2013. According to the plaintiff, the letter dated 03.04.2013 suspending from the office of Bishop is unconstitutional as the Executive Committee of the Synod does not have the power to suspend the Bishop. The plaintiff quoted Chapter V, Rule 12(a), Chapter IX, Rule 14, Chapter IX Rule 29 to buttress his contention that the Executive Committee of Synod has no power power to suspend. He therefore filed O.S.No.2065 on the file of the XVI Assistant City Civil Court, Chennai, for a declaration that the letter of the Synod dated 03.04.2013 as null and void. The defendant entered appearance and filed counter affidavit. In the mean while, a member of the Karnataka Diocese filed a case against the defendant questioning his right to conduct consecration, ceremony in St.Mark's Cathedral as the defendant was facing serious charges and therefore, the defendant approached the plaintiff knowing fully well that the pendency of the said suit would prejudice his function as Moderator and pressurised the plaintiff to withdraw the suit O.S.No.2065 of 2013

and also asked for a letter of apology stating that there would be a revocation of the order of suspension dated 25.02.2013. Believing and trusting the representation of the defendant, the plaintiff wrote a letter to the defendant in his own hand seeking apology and the letter of apology sent by the plaintiff was prepared by the advocate of the defendant and the plaintiff was made to sign the said letter of apology under coercion. The plaintiff thought that by sending letter dated 08.05.2013 expressing apology, the matter would be given a quietus and there would not be any problem for functioning as Bishop of Thoothukudi-Nazareth Diocese and believing the representation, the plaintiff also withdrew O.S.No.2065 of 2013 on the belief that the order of suspension would be revoked by the defendant. In that circumstances, O.S.No.2065 of 2013 on the file of XVI Assistant City Civil Court, Chennai, and O.S.No.64 of 2013 on the file of the Subordinate Court, Thoothukudi were dismissed as withdrawn. However, the defendant did not take any steps to revoke suspension, though various promises were made by the defendant that the matter would be discussed in CSI Synod Working Committee meeting, no progress was made in that matter though four months had lapsed. Therefore, the plaintiff was constrained to send a reminder letter dated 27.08.2013 and the defendant sent a letter dated 31.08.2013 as reply to the plaintiff's letter dated 27.8.2013. From the contents of the letter dated 31.08.2013, the plaintiff realised that the defendant

used his office and forced the plaintiff to withdraw the pending cases, and in the letter dated 31.08.2013, financial irregularities were also levelled against the plaintiff, which were false. The plaintiff states that on the basis of the letter dated 31.08.2013, the defendant was contemplating to call the Council of Bishops for a meeting on 17.10.2013 to remove the plaintiff from the post of Bishop and as the order of suspension is *ultra vires* the constitution of Church of South India, which was challenged by the plaintiff by filing a suit in O.S.No.2065 of 2013, which was clandestinely restored by the defendant by making the plaintiff to withdraw the suit in O.S.No.2065 of 2013, the plaintiff filed the above suit for the relief as aforementioned.

4. The applicant/defendant filed the above Application to reject the plaint in C.S.No.710 of 2013 on the ground that O.S.No.2065 of 2013 was filed for the same relief and that was withdrawn by the plaintiff without seeking leave and on the basis of withdrawal memo submitted by the plaintiff, the suit was also dismissed as withdrawn and therefore, a fresh suit on the same cause of action for the same relief under Order XXIII, Rule 1(4) of the CPC is liable to be rejected. It is also stated that the impugned order was issued by the General Secretary on behalf of the CSI Synod/Executive Committee of the Synod and the Synod's Executive Committee

suspended the plaintiff and no relief could be claimed against the defendant, the Moderator, and without impleading the Synod Executive Committee, the suit is not maintainable and the suit is bad for non-joinder of necessary parties and also not maintainable under Order I Rule 9 of the CPC as the CSI Synod and Synod Executive Committee are unregistered bodies and therefore, without obtaining leave under Order I, Rule 8 of the CPC, the present suit is also not maintainable.

5. The plaintiff filed a counter affidavit reiterating the allegations made in the plaint stating that by practising fraud and coercion, the letter dated 08.5.2013 was obtained from the plaintiff and he was under the impression that his suspension would be revoked on tendering apology by letter dated 08.5.2013 and on that basis, he withdrew the suit in O.S.No.2065 of 2013. Therefore, the present suit filed by him is maintainable.

6. It is submitted by Mr.Adrian D.Rozario, learned counsel for the applicant that, admittedly, the relief prayed for in O.S.No.2065 of 2013 and the relief prayed for in the present suit are identical and that, earlier suit was withdrawn without obtaining any leave and therefore, as per Order XXIII, Rule 1(4) of the CPC, the plaintiff is precluded from instituting any fresh suit in respect of the such subject matter or such part of the claim. He also relied upon the judgment

reported in **2009-4-L.W.742 [Thoothukudi Nazareth Diocese rep.by its Treasurer & another v. the Church of South India and another]** in support of his contention that the plaintiff and the defendant are unincorporated bodies and therefore, without getting permission of the Court under Order I, Rule 8 of the CPC, the suit is not maintainable.

7. On the other hand, Mrs.Chitra Sampth, learned Senior Counsel, appearing for the respondent/plaintiff, reiterated the very same stand taken in the plaint and contended that though the prayer in both the suits appears to be the same, the present suit is filed by making allegation that fraud has been practised upon the plaintiff to execute the letter of apology and the plaintiff was forced to withdraw the earlier suit O.S.No.2065 of 2013 by false promise that the order of suspension would be revoked and later, the applicant not only failed to revoke the order of suspension but also made serious allegations against the plaintiff and therefore, the cause of action for the present suit and the cause of action for the earlier suit are different and therefore, the present suit will not come under the mischief of Order XXIII, Rule 1(4) of the CPC and therefore, the plaint cannot be rejected. She further submitted that the permission to file the present suit under Order I Rule 8 can also be obtained at any point of time and on that ground, the plaint cannot be rejected and she also

submitted that the plaint cannot be rejected on the ground of non-joinder of necessary parties. She, therefore, contended that no case has been made out to reject the plaint and therefore, the Application is liable to be dismissed.

8.To appreciate the contention of both parties, the provision of Order XXIII, Rule 1(4) of the CPC has to be looked into and it is as follows:-

“ORDER XXIII

WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim – (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such person is represented by a pleader by a certificate of the pleader to the effect the abandonment proposed is, in his

opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

9. A reading of the sub-rule (4) would make it clear that when a suit is abandoned or a part of claim is abandoned or when a suit is withdrawn or part of the claim is withdrawn without permission from Court under Order XXIII, Rule 1 (4) of the CPC, the plaintiff shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Therefore, Order XXIII, Rule 1 (4) of the CPC deals with abandonment of a suit or part of the claim or withdrawing the suit or part of a claim without the permission of the Court and in that event, fresh suit in respect of the such subject matter or such part of the claim is prohibited. Therefore, for abandoning any suit or part of the claim, there is no need for any permission or leave from the Court for doing so. On the other hand, when the plaintiff wants to withdraw the suit or a part of the claim, he cannot do that without the permission of the Court as per sub-rule (3) of Rule 23. As per sub-rule 3 of Rule 23, the Court, on being satisfied that the suit must fail by reason of some formal defect or there was sufficient grounds for allowing the plaintiff to institute a fresh suit in the same subject matter of a suit or part of a claim, may grant permission to the plaintiff to withdraw such suit or part of the claim with liberty to institute a fresh suit in respect of the subject matter of the suit or such part of the claim. Therefore, for withdrawing a suit or part of a claim, Court has to be satisfied on the reasons stated and Court should grant permission to withdraw the suit or part of the

claim and also grant liberty to institute a fresh suit on the same subject matter or such part of the claim.

10. In the judgment reported in ***AIR 1970 SC 987 [Rukmanibai v. Mahadeo]***, it is held that the subject matter means a bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him. The expression "subject matter" has a reference to right in the property and it also includes cause of action and the relief claimed. Subject matter in sub-rule (4) means cause of action and where the cause of action is different, the subsequent suit is not barred even if it is in respect of the same property.

11. In the judgment reported in ***AIR 1928 Madras 689 [Rangacharya v. Raman]***, and in the judgment reported in ***AIR 1929 M 798 [Narayanaswami v. Mannar]***, it has been held that identity of parties and the identity of causes of action must be established to prohibit a person from filing his second suit after withdrawing the earlier suit without the permission. Therefore, though the sub-rule (4) speaks about the part of the claim or subject matter of a suit, it only refers to the identity of cause of action in both the suits.

12. Therefore, we will have to find out the pleadings in O.S.No.2065 of 2013 and the pleadings in C.S.No.710 of 2013 to find out whether the cause of action in both the suits are the same. In O.S.No.2065 of 2013, the prayer was to declare the letter of the defendant (applicant in the present Application), dated 3.4.2013 addressed to the plaintiff (respondent herein) as null and void. O.S.No.2065 of 2013 was filed by Rev.Dr.J.A.D.Jebachandran against CSI Synod, Chennai, and C.S.No.710 of 2013 was also filed by the very same plaintiff and the defendant is the Moderator, the Church of South India, CSI Synod Centre, Chennai. As per the allegations in suit O.S.No.2065 of 2013, the order of suspension dated 3.4.2013, which was challenged in both the suits was issued by the General Secretary, CSI and Hony.Secretary, CSI TA and therefore, O.S.No.2065 of 2013 was filed by the plaintiff against the CSI Synod represented by General Secretary. Earlier O.S.No.64 of 2013 was filed by the very same plaintiff against CSI Synod for declaring the letter of the defendant dated 16.2.2013 addressed to the plaintiff as null and void and for an order of permanent injunction. In the present suit C.S.No.710 of 2013, the prayer is to declare the order of suspension dated 3.4.2013 as *ultra vires* stating that the order dated 3.4.2013 was clandestinely restored by the defendant after the plaintiff was forced to withdraw the earlier suit filed by the plaintiff. Though in the present suit C.S.No.710 of 2013, the plaintiff has alleged that the reason for

withdrawing O.S.No.2065 of 2013 was the representations and promises made by the Synod Executive Committee and the Moderator, which prompted the plaintiff to withdraw the earlier suit in O.S.No.2065 of 2013, the letter dated 3.4.2013 was not restored as claimed by the plaintiff and the only allegation made by the plaintiff in the present suit is that after the issuance of order of suspension dated 3.4.2013, he was asked to submit a letter of apology dated 8.5.2013 and according to him, the letter of apology was obtained by practising deception and coercion, which cannot go together and the plaintiff has also sent the letter of apology as per the dictation of the defendant under the impression that it would put an end to the matter. It is further stated in the plaint that the plaintiff was forced to withdraw the suit on the basis of certain promises or representations made by the defendant or CSI Synod, which were later not kept up and therefore, withdrawal of the suit in O.S.No.2065 of 2013 has no legal effect as fraud was practised upon the plaintiff. A reading of the plaint would make it clear that on the basis of the assumption by the plaintiff that by giving the letter of apology, his suspension order would be revoked, and in good faith, he withdrew the suit in O.S.No.2065 of 2013. Though it is stated in Paragraph 15 of the plaint that withdrawal of the memo dated 27.6.2013 was prepared by the defendant's advocate, and further, it is also stated in the letter addressed to the defendant dated 27.6.2013 that as suggested by the

defendant, the plaintiff was withdrawing the suit O.S.No.2065 of 2013 filed by him in the City Civil Court, Chennai, in the said letter dated 27.06.2013, nothing more has been stated that the suit was withdrawn on the suggestion that the suspension order would be revoked. In the memo filed by the plaintiff in O.S.No.2065 of 2013 also, nothing has been stated except that the suit was to be withdrawn by the plaintiff and permission of the Court was to be sought for withdrawal of the suit by the plaintiff. A reading of the plaint in C.S. No.710 of 2013 also makes it clear that except a passage in Paragraph 23 that the defendant cleverly made the plaintiff to withdraw the suit from the file of the City Civil Court, Chennai, no allegation of fraud, or coercion or misrepresentation was made against the defendant, on the basis of which the plaintiff was made to withdraw the suit. Further, the allegations made in the plaint would also make it clear that C.S.No.710 of 2013 was filed only to declare that the letter dated 31.8.2013 making charges against the plaintiff is unconstitutional, illegal and liable to be set aside and for that purpose, the suit was filed, *vide* the last sentence in Paragraph 23. However, no such prayer regarding the letter dated 31.8.2013 and to declare the same unconstitutional or void, has been prayed for. Though the plaint speaks about various correspondences and happenings after suspension letter dated 3.4.2013, the prayer is only to declare the order of suspension dated 3.4.2013 as *ultra vires* and hence, the

prayer in O.S.No.2065 of 2013 and prayer in C.S.No.710 of 2013 are one and the same. The cause of action in both the suits are one and the same and therefore, without obtaining the leave or permission from the Court while withdrawing the suit in O.S.No.2065 of 2013, the present suit for the same relief is not maintainable as per Order XXIII, Rule 1(4) of the CPC.

13. As stated supra, the suspension order dated 3.4.2013 was not restored as claimed by the plaintiff and that the prayer was so cleverly drafted to make it appear that it is a different suit with a different prayer and a reading of the plaint's allegation and the prayer would make it clear that the plaintiff's intention is only to get the suspension order declared as *ultra vires* or null and void and the same prayer was made in the earlier suit and hence, the present suit is prohibited under Order XXIII, Rule 1 (4) of the CPC. Though the defendant in O.S.No.2065 of 2013 and C.S.No.710 of 2013 are two different persons, having regard to the nature of the allegations made in both the suits and having regard to the fact that suspension order dated 3.4.2013, which is challenged in both the suits was issued by the General Secretary, CSI, & Hony.Secretary CSI TA, by changing the office of the defendant, the plaintiff cannot contend that the parties are different and therefore, the provision under Order XXIII, Rule 1 (4) of the CPC cannot be made applicable.

14. According to me, it would be a clear abuse of process of Court, if the party is permitted to file two separate suits by impleading two different persons of the same organisation to get over the restriction under Order XXIII, Rule 1 (4) of the CPC. Further, when the order of suspension was not issued by the defendant and was issued by the General Secretary, CSI, & Hony. Secretgry CSI TA, the suit filed against the person/authority, who/which has not issued such an order is also not maintainable and on that ground also, the suit is liable to be rejected. Hence, I am unable to accept the contention of the learned Senior Counsel appearing for the defendant, and having regard to bar under Order XXIII, Rule 1 (4) of the CPC, the present suit filed by the respondent/plaintiff in respect of the same subject matter is not maintainable and is liable to be rejected.

15. As I have rejected the plaint by the abovesaid ground, I have not considered several other points raised by the applicant/defendant regarding the absence of leave under Order I Rule 8 of the CPC. Further, a suit cannot be rejected on the ground of non-joinder of necessary parties.

16. In the result, the Application is allowed and the plaint is rejected. No order as to costs.

30.06.2014

Index : yes

Internet: yes

asvm

R.S.RAMANATHAN, J

(asvm)

Order in

A. No.5968 of 2013
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