IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU
O.S.A. Nos. 291 and 292 of 2020

O.S.A. No. 291 of 2020:-

J.M. Imran Khan

... Appellant

-vs-

1. G.R.Apparaj,
   President,
   Chintadripet Fish & Perishable Products Traders Society,
   No. 24, Arunachala Naicken Street,
   Chintadripet,
   Chennai - 600 002.

2. C.R.Kasthuri

3. Sarayou Basanth

4. B.Saaru Rupa

5. B.Hema Rupa

... Respondents

PRAYER:- Original Side Appeal filed under Order XXXVI Rule 2 of the Original Side Rules read with Clause 15 of the Letters Patent, praying to set aside the order dated 25.11.2019 made in A. No. 4630 of 2019 in C.S. No. 374 of 2017.

O.S.A. No. 292 of 2020:-

J.M. Imran Khan

... Appellant

-vs-

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1. G.R.Apparaj,
   President,
   Chintadripet Fish & Perishable Products Traders Society,
   No. 24, Arunachala Naicken Street,
   Chintadripet,
   Chennai - 600 002.

2. N.Rajasekaran

3. B.Ganapathi

4. M.Mohammed Ali

5. P.Ramadoss

6. M.Shanmugam

7. G.R.Apparaj

8. M.C.Sekar

9. D.Jayachandran

10. K.Basker

11. S.Harikrishnan

12. M.C.Ravi

13. S.Anbarasan

14. S.Balaji

15. K.M.Abdul Salam

16. K.R.Kalaimani

17. S.Kartick

18. D.Y.Mohammed Saliah

19. J.T.Jalal

20. M.C.Baskar

21. C.R.Kasthuri

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22. Sarayou Bsanth

23. B.Saaru Rupa

24. B.Hema Rupa

... Respondents

PRAYER:- Original Side Appeal filed under Order XXXVI Rule 2 of the Original Side Rules read with Clause 15 of the Letters Patent, praying to set aside the order dated 25.11.2019 made in A. No. 4631 of 2019 in C.S. No. 374 of 2017.

For Appellant : Mr. S.R. Raghunanthan
for Mr. P.S.Amalraj (in both O.S.A.s)

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.,)
(through video conference)

The intra-court appeals in O.S.A. Nos. 291 and 292 of 2020 arise out of the orders dated 25.11.2019 in Application Nos. 4630 and 4631 of 2017 respectively in C.S. No. 374 of 2017 passed by the Learned Judge on the Original Side of this Court.

2. The parties are hereinafter referred to as per their description in C.S. No. 374 of 2017 for the sake of clarity and convenience.

3. We have heard Mr. S.R.Raghunanthan, Learned Counsel appearing for the Fifth Defendant and perused the materials placed on record, apart from the pleadings of the parties.

4. The members of Chintadripet Fish and Perishable Products Traders Society (hereinafter referred to as the 'Association' for short), which has been registered under the Tamil Nadu Societies Registration Act, 1975, claim to be in possession and enjoyment of the property measuring around 1880 square meters comprised in Survey No. 735/47 situated at Arunachala Naicken Street, Chintadripet, Chennai - 600002, which originally belonged to one C.R.B.Ramesh Babu. According to the Association, an agreement dated 06.05.1990 had been entered by it with the said C.R.B.Ramesh Babu in respect of the manner in which the said property should be maintained and enjoyed. It had been provided in clause 16 of the said agreement as follows:-

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"in the event of the owners selling or attempting to further lease out the property, the first right to purchase the same is given to the Society"

The question of buying that property did not arise during the lifetime of the said C.R.B.Ramesh Babu because he did not attempt to sell the same and the individual members of the Association were paying rents to him. After the death of the said C.R.B.Ramesh Babu and his son, viz., C.R.Basanth Babu, the said property devolved upon C.R.Kasthuri (wife of C.R.B.Ramesh Babu), Sarayou Basanth (wife of C.R.Basanth Babu) and B.Saaru Rupa and B.Hema Rupa (daughters of C.R.Basanth Babu). On coming to know that the said persons had executed an agreement with one J.M.Imran Khan for sale of an extent of 3.87 grounds of the said property, the Association, viz., 'Chinthadripet Fish and Perishable Products Traders Society, represented by its President', had on 02.05.2017 instituted the suit in C.S. No. 374 of 2017 on the original side of this Court against the said persons, who have been arrayed as the First to Fourth Defendants, for specifically enforcing clause 16 of the agreement dated 06.05.1990 by directing them to execute sale-deed in respect of that property in favour of the Plaintiff and for permanent injunction restraining them or any persons claiming through them from in any manner alienating or encumbering the property to any third party or disturbing the peaceful possession and enjoyment of the property by the Plaintiff and its members. Shortly thereafter, the First to Fourth Defendants had executed a sale-deed dated 03.05.2017 in favour of the said J.M.Imran Khan, which has been registered as Document No. 1235 of 2017 on the file of the Office of the Sub-Registrar, Periamet at Chennai. The said J.M.Imran Khan was impleaded as the Fifth Defendant by order dated 12.06.2017 in Application No. 3046 of 2017 passed in that suit. The Fifth Defendant resisted that suit by filing Written Statement dated 16.07.2018 and also by way of application to reject the plaint in Application No. 7144 of 2017 by contending that the suit filed by the Association was not maintainable and the nature of rights sought to be enforced in that suit were not for the Association but for its members who were not parties thereto. At that stage, the application in Application No. 4630 of 2019 had been made to amend the cause-title relating to the description of the Plaintiff as follows:-

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"G.R.Apparaj,
President,
Chinthadripet Fish and Perishable Products Traders Society,
No. 24, Arunachalam Street,
Chinthadripet,
Chennai - 600 002."

Another application in Application No. 4631 of 2019 was made to implead 19 members of the Association as the Second to Twentieth Plaintiffs in that suit. Though the Fifth Defendant opposed both of those applications, the amendments sought were ordered by order dated 25.11.2019 passed by the Court. Aggrieved thereby, the Fifth Defendant has filed these appeals.

5. The primordial contention of the Learned Counsel for the Fifth Defendant is that a society, whether registered or not, is not capable of ownership of any property or of suing or being sued in its name as held by the Hon'ble Supreme Court of India in Illachi Devi -vs- Jain Society, Protection of Orphans India [(2003) 8 SCC 413], and as such, the applications for amendments ought not to have been entertained. The same proposition of law, which had been canvassed earlier, has been negatived by this Court in S.Vetrivel -vs- Tamil Nadu Advocates Association [(2011) 4 MLJ 226], where it has been succinctly explicated as follows:-

"30. Section 20 of the Tamil Nadu Societies Registration Act, 1975, does not prohibit a Society from instituting any civil proceeding for the redressal of the grievances of its members. Sub Section (1) of Section 20 stipulates that the Committee or any Officer of the registered Society authorised in this behalf by its bye-laws may bring or defend or cause to be brought or defended any action or other legal proceeding touching or concerning any property, right or claim of the registered society and may sue or be sued in respect of any such property, right or claim. It does not mean that the right of a registered Society to institute a suit is confined only to any property, right or claim of the registered society and not to any property, right or claim of the members of the society. The right or claim of the members of a registered Society, if found to exist in a common platform, can always be agitated by the Society on behalf of its members.

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31. In Illachi Devi -vs- Jain Society, Protection of Orphans India [2003 (8) SCC 413], the Supreme Court pointed out that the mere fact of registration of a society under the Societies Registration Act, will not make the said society distinct from an Association of persons. A Society is not a body corporate as is the case in respect of a company registered under the Companies Act, 1956. While a company enjoys an identity distinct from its original shareholders, a Society is indistinguishable in some aspects, from its own members. In the same decision, the Supreme Court pointed out in paragraph 54 as follows:-

> "54. Societies registered under the Societies Registration Act, in the changed scenario play an important role in society. They discharge various functions which are beneficial to society. They run educational and other institutions. They sometimes work in public interest and act in aid of State functions. They have their own accountability. They sometimes incur liabilities. Public interest litigations filed by societies are galore."

Therefore, the contention that the suit is not maintainable at the instance of a society, is unsustainable."

The said decision has been affirmed in appeal by the Division Bench of this Court in S.Vetrivel -vs- Gini Manuel [(2011) 2 LW 790]. While concurring with the aforesaid views expressed, it is noticed from the plaint in C.S. No. 374 of 2017 that it has been signed and verified at the time of presentation by G.R.Apparaj as the President of the Association on whose behalf the suit has been instituted. In paragraph 4 of the affidavit filed in support of the applications for amendment, it has been averred as follows:-

> "4. I humbly submit that I have already filed the bye-laws as suit documents. Clause (h) of the bye-law of the Plaintiff Association is extracted below:-
>
> **எச்) வழக்கு :–**
>
> **சங்கத்தின் சார்பாக வழக்கு தொடுக்க வேண்டுமானாலும் அல்லது பிறர் சங்கத்தின் மீது வழக்கு தொடுத்தாலோ சங்கத்தின் தலைவரின் பெயரிலேயே வழக்குகள் மேற்கொள்ளப்படும்**

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Clause (s) (4) of the bye-law of the plaintiff Association is also extracted below:-

எஸ்) 4) தலைவர் சங்கத்திற்காக முன்னின்று செயல்படுதல், வழக்காடுதல் மற்றும் அனைத்து காரியங்களையும் நடத்த வேண்டும்

As per the bye-laws of the plaintiff Association I am entitled to sue on behalf of the plaintiff Association."

Section 20 of the Tamil Nadu Societies Registration Act, 1975, reads as follows:-

"20. Legal proceedings by or against registered societies:-

(1) The committee or any officer of the registered society authorized in this behalf by its bye-laws may bring or defend or cause to be brought or defended any action or other legal proceeding touching or concerning any property, right or claim of the registered society and may sue or be sued in respect of any such property, right or claim.

(2) Any action or other legal proceeding shall not abate or be discontinued by the death, resignation or removal from office of any officer of the registered society."

It has been prescribed in Rule 9 of Order I of the Code of Civil Procedure, 1908, as follows:-

"9. Mis-joinder and non-joinder:-

No suit shall be defeated by reason of the mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party."

In this factual backdrop viz-a-viz the relevant legal provisions, it is beyond any pale of doubt that the amendments made to the plaint are necessary for the purpose of determining the real questions in controversy between the parties for effectual and complete adjudication of the suit satisfying the requirement of Rule 10 of Order I and Rule 17 of Order VI of the Code of Civil Procedure, 1908, which do not require any interference.

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6. Yet another plea raised by the Learned Counsel for the Fifth Defendant is that in respect of a suit for enforcement of a right of pre-emption, in terms of Article 97 of the Schedule to the Limitation Act, 1963, the period of limitation of one year has to be computed from the date of taking physical possession by the purchaser of the property or if it does not involve such dispossession, the date of registration of such sale, and the amendments, which have been sought after the lapse of the said period, ought not to have been entertained. As Section 21 of the Limitation Act, 1963, exhaustively deals with the effect of substituting or adding a new plaintiff, which would govern the rights of the parties in the suit, it would be pre-mature at this stage of the litigation to dwell into that aspect of the matter. Suffice to observe here that the issue of limitation, which is a mixed question of law and fact, has to be agitated by the parties with reference to their respective pleadings in that regard at the time of final decision in the suit. Since the Fifth Defendant is entitled, as of right, to file additional written statement pursuant to the amendments made in the suit by the impugned orders, there cannot be any prejudice caused to him and he is not precluded from working out his rights in accordance with law.

7. Learned Counsel for the Fifth Defendant lastly made a submission that some of the members of the Association, who have been added as Plaintiffs, have entered into fresh lease agreements with the Fifth Defendant which would amount to forfeiture of right to enforce any pre-emption for purchase of the property. As rightly held by the Learned Judge in the impugned orders, that is also a matter to be decided in the suit on the basis of pleadings and evidence adduced by the parties for the same.

In the upshot, these appeals, which do not deserve admission, are dismissed. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

To

The Sub-Assistant Registrar (O.S.),
High Court of Madras,
Chennai.

+2 ccs to Mr.P.S.Amalraj Advocate sr551

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