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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2021

Delivered on : 22.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE PARESH UPADHYAY
AND

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.Nos. 284 and 261 of 2021
and

C.M.P.Nos. 12371 and 14391 of 2021

O.S.A.No. 284 of 2021

M.A.M.R.Muthiah

.. Appellant

vs

1.R.M.Veerappan

2.V.Jayaraman

3.Rajah Annamalaipuram Sri Ayyappa,
Swamy Temple Trust,
Having its Registered Office at
No.83, Santhome High Road,
Chennai - 600 028.
Rep. By its Secretary,
Sri.A.R.Ramasamy Chettiar

4.K.Chidambaram

.. Respondents

O.S.A.No. 261 of 2021

K.Chidambaram

.. Appellant

vs

1.R.M.Veerappan

2.V.Jayaraman

3.Rajah Annamalaipuram Sri Ayyappa,
Swamy Temple Trust,
Having its Registered Office at
No.83, Santhome High Road,
Chennai - 600 028.
Rep. By its Secretary,
Sri.A.R.Ramasamy Chettiar



4.M.A.M.R.Muthiah
Chettinad House,
Rajah Annamalaipuram,
Chennai - 600 028.

.. Respondents

Prayer in O.S.A.No.284 of 2021: Appeal preferred under Order XXXVI Rule 1 of the O.S.Rules read with Clause 15 of the Letters Patent against the order dated 30.07.2021 made in A.No.344 of 2021 in C.S.No.37 of 2021.

Prayer in Application No.344 of 2021:

Judges summons issued under Order XIV Rule 8 of O.S.Rules R/w Section 151 of C.P.C. and the application is filed praying to appoint a Commissioner for the purpose of conducting the election for the Executive Committee Members and office bearers of the 1st defendant/1st respondent society in accordance with the Memorandum and Byelaws of the 1st defendant/1st Respondent Society within such time as may be directed by this Court and file a report as to the same in this Hon'ble Court, pending disposal of the above suit.

Prayer in O.S.A.No.261 of 2021: Appeal preferred under Order XXXVI Rule 1 of the O.S.Rules read with Clause 15 of the Letters Patent against the order dated 30.07.2021 made in A.No.344 of 2021 in C.S.No.37 of 2021.

Prayer in Application No.344 of 2021:

Judges summons issued under Order XIV Rule 8 of O.S.Rules R/w Section 151 of C.P.C. and the application is filed praying to appoint a Commissioner for the purpose of conducting the election for the Executive Committee Members and office bearers of the 1st defendant/1st respondent society in accordance with the Memorandum and Byelaws of the 1st defendant/1st Respondent Society within such time as may be directed by this Court and file a report as to the same in this Hon'ble Court, pending disposal of the above suit.

For Appellant : Mr.V.Raghavachari
for Mr.T.Balaji
(in O.S.A.No.284/2021)

Mr.T.Mohan for
Mr.Abihnava Parthasarathy
(in O.S.A.No.261/2021)

For Respondents : Mr.G.Masilamani, Sr. Advocate
for Mr.T.Sathiyamoorthy for R1
Mr.R.Srinivas
for Mr.S.Sithirai Anandam for R2
Mr.AR.L.Sundaresan, Sr. Advocate
for M/s.AL.Ganthimathi for R3
Mr.T.Mohan for
Mr.Abihnava Parthasarathy for R4
(in O.S.A.No. 284/2021)



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Mr.G.Masilamani, Sr. Advocate
for Mr.T.Sathiyamoorthy for R1
Mr.R.Srinivas
for Mr.S.Sithirai Anandam for R2
Mr.AR.L.Sundaresan, Sr. Advocate
for M/s.AL.Ganthimathi for R3
Mr.V.Raghavachari
for Mr.T.Balaji for R4
(in O.S.A.No.261 of 2021)

COMMON JUDGMENT

(Per: PARESH UPADHYAY, J.)

Challenge in these appeals is made to the order dated 30.07.2021 recorded on Appln. No.344 of 2021 in C.S.No.37 of 2021. The dispute is with regard to Management of the affairs of Rajah Annamalaipuram Sri Iyyappa Swami Temple Trust, R.A.Puram, Chennai. The said Trust is defendant No1. The present appellants are defendant no.2 and 3 in the said suit.

2. In the said suit (C.S.No. 37 of 2021), two applications were filed by the plaintiffs (being Appln. Nos. 342 and 344 of 2021), in which the present appellants being defendants No. 2 and 3 in the suit are the respondents. It is noted that the impugned order is common qua Appln. Nos. 342 and 344 of 2021 but the challenge is qua the order on Appln. No. 344 of 2021. These two appeals are by two different defendants but not against different orders.

3. The prayer in the suit (C.S.No.37 of 2021) reads as under:-

- "a) directing the defendant No.1 herein to forthwith convene the General Body Meeting of the 1st defendant Society for the purpose of considering and approving the annual reports and accounts of the 1st Defendant Society by the general body of the 1st defendant and for conducting election of the committee members and office bearers of the 1st defendant Society and fulfilling all statutory and administrative procedures and measures.
- b) direct the defendants to pay the plaintiff the costs of the suit."

4.1 The prayer clause in A.No.344 of 2021 was as under:-

- "Judges summons issued under Order XIV Rule 8 of O.S.Rules read with Section 151 of C.P.C. and the application is filed praying to appoint a Commissioner for the purpose of conducting the election for the Executive Committee Members and office bearers of the 1st defendant/1st respondent society in accordance with the Memorandum and Byelaws of



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the 1st defendant/1st Respondent Society within such time as may be directed by this Court and file a report as to the same in this Hon'ble Court, pending disposal of the above suit."

4.2 The prayer clause in A.No.342 of 2021 was as under:-

"Judges summons issued under Order XIV Rule 8 of O.S.Rules read with Section 151 of C.P.C. and the application is filed praying for an order of ad-interim direction directing the respondents/defendants 2 and 3 to submit the annual accounts and the annual accounts of the 1st defendant society for the year ended 31.03.2017, 31.03.2018, 31.03.2019 and 31.03.2020 before the General Body meeting of the 1st defendant Society to be convened by the orders of this Hon'ble Court, pending disposal of the suit."

5. The operative part of the impugned order reads as under:-

"58. For all the above said reasons, the Application No. 344 of 2021 is ordered as follows:

i) Thiru.K.N.Basha, retired Hon'ble Judge of this Court, residing at Flat No.F-1, "STAR", No.25/1, Dr.Ambedkar Road, (Old ICF Link Road), North Thirumalai Nagar, Villivakkam, Chennai - 600 049, (Cell No.94444454545) is appointed as Judge Commissioner to call for the General Body Meeting of the 1st respondent Society and to conduct election to the Executive Committee of the 1st respondent Society.

ii) The Hon'ble Judge Commissioner is requested to draw up a time line for conduct of the General Body Meeting of the 1st respondent Society and for the conduct of election to the Executive Committee of the Society by initiating action in terms of the bye-laws of the Society read with the provisions of the Tamil Nadu Societies Registration Act, 1975.

iii) The Hon'ble Judge Commissioner is also requested to issue individual notices to all the existing and valid members of the Society and fix a date for election and an appropriate venue for the voting/polling to be chosen by him in this regard. The Society is directed to make available a suitable place for the smooth conduct of the election under the aegis of the Hon'ble Judge Commissioner.



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iv) The Hon'ble Judge Commissioner is also requested to announce the result on completion of the election process to the Executive Committee and a report may be filed before this Court with the details of the election of members and the office bearers to the Executive Committee of the 1st respondent Society.

v) The Hon'ble Judge Commissioner is also at liberty to call for a meeting at an informal level of all the members of the Society with a view to seek their co-operation for smooth conduct of the General Body Meeting and the election to the Executive Committee.

vi) The Hon'ble Judge Commissioner is at liberty to seek any professional assistance for completing the task of the election process and the declaration of the results thereof.

vii) The Hon'ble Judge Commissioner is at liberty to fix his remuneration on the basis of his assessment of work involved in the whole process of the conduct of the General Body Meeting, the conduct and completion of the election to the Executive Committee of the Society, preparation of the final report etc.

viii) The Hon'ble Judge Commissioner is also at liberty to fix the remuneration of any professional assistant/ assistants to be engaged in the course of discharge of his assignment and he is also at liberty to claim any expenditure he may incur, which is incidental to the assignment, like transport and arrangements for the conduct of the meeting and the election.

ix) It is also open to the Hon'ble Judge Commissioner to seek any clarification from this Court, if need arises in the course of the discharge of his assignment.

x) The 1st respondent Society is directed to make the payment to the Hon'ble Judge Commissioner as per initial or final remuneration fixed by him including that of any professional assistants to be engaged by him, promptly without any delay.

xi) As there being no dispute to the membership of the Society, the parties/members are hereby directed to extend their utmost co-operation to the Hon'ble Judge Commissioner for the smooth conduct of the General Body meeting and the election to the Executive Committee.

59. Application No.344 of 2021 is accordingly



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disposed of. So far as the prayer in Application No.342 of 2021 is concerned, the same will be considered after completion of the election to the Executive Committee and the submission of the report by the Hon'ble Judge Commissioner before this Court.

60. Post Application No.342 of 2021 and the Suit for hearing after four weeks."

6. Learned advocates for the appellants have submitted that the election of the Trust in question could not have been ordered since the term of office bearers / Members of the Executive Committee is of three years and since the said Committee can not be said to have completed its term, holding fresh election is illegal and therefore the impugned order passed by learned Single Judge needs to be interfered with. It is noted that in support of this submission, learned advocates for the appellants has extensively taken this Court through various statutory provisions and has submitted that the impugned order be interfered with.

7. On the other hand, learned advocates for the respondents have submitted that the only point which falls for consideration of this Court and which is taken note of by learned Single Judge also is whether the present appellants can be permitted to take advantage of, of the proceedings instituted by the appellant in O.S.A.No. 284 of 2021 and stay granted in his favour at his request. Specific reference is made to the proceedings of O.S.No.320 of 2017 with specific reference to the relief sought in the suit and interim injunction prayed for and granted in favour of the said plaintiff. It is submitted that these appeals be dismissed.

8. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

8.1 The appellant of O.S.A.No.284 of 2021 is the plaintiff of O.S.No.320 of 2017. The dispute in the said case is also with regard to Management of the affairs of Rajah Annamalaipuram Sri Iyyappa Swami Temple Trust, as it is in the present case i.e., in C.S.No.37 of 2021. Here also the said Trust is defendant No.1. The reliefs sought in the said suit are as under:-

"a) For a Declaration to declare that the notice dated 10th of January 2017 for Extra Ordinary General Body Meeting scheduled to be held on 4th of February 2017 at 11.00 A.M. at the Registered office of the Trust at No.82, Santhome High Road, RA Puram, Chennai - 600 028 issued by the 2nd Defendant as arbitrary, illegal and contrary to the byelaws of the 1st



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Defendant Trust and the provision of the Tamil Nadu Societies Registration Act, 1975;

b) For a consequential Permanent Injunction restraining the 1st and 2nd Defendants, their men, agents, representatives, staffs, or any other person or persons from in any manner convening the EGM meeting scheduled to be held on 4th of February 2017 at 11.00 PM at the Registered office of the Trust at No.82, Santhome High Road, RA Puram, Chennai - 600 028 as per the notice dated 10th of January 2017 issued by the 2nd Defendant;

c) For a Declaration to declare that the recording in the minutes of the Annual General Body Meeting dated 30.07.2016 that the election of the office bearers was inconclusive and that the Chairman of the said meeting did not declare the results of the election of the office bearers, is contrary to facts, illegal and therefore null and void;

d) For a Declaration to declare that the Plaintiff is the elected President of the 1st Defendant Trust vide the AGM meeting held on 30.07.2016 for a period of three years commencing from 30.07.2016 to 29.07.2019;

e) For a Permanent Injunction restraining the 2nd Defendant,, his men, agents, representatives, staffs, or any other person or persons from altering the constitution and composition of the elected Executive Committee and other office bearers of the 1st Defendant trust including the election of the Plaintiff as President of the 1st Defendant trust as per the meeting of the General Body of the 1st Defendant Trust held on 30.07.2016;

f) Such other relief or reliefs as this Hon'ble Court may deem fit;

g) Cost of the suit;"

8.2 In the said suit, in continuation of the main prayer (a) and (b) quoted above, interim applications were filed by the said plaintiff being I.A.Nos. 865 & 866 of 2017 in O.S.No. 320 of 2017. The prayer clause of the said applications read as under:-

"I.A.No.865/2017:-

The petitioner/ plaintiff has filed this application under Order XXXIX Rule 1 & 2 of C.P.C. to grant an order of interim injunction restraining the 2nd respondent / defendant, his men, agents, representatives, staffs or any other person or persons from in any manner altering the constitution and composition of the elected Executive



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Committee and office bearers of the 1st defendant including the election of the Plaintiff as President of the 1st defendant trust, as per the meeting of the Annual General Body of the 1st defendant Trust held on 30.07.2016 pending disposal of the suit.

I.A.No.866/2017:

The petitioner / plaintiff has filed this application under Order XXXIX Rule 1 & 2 of C.P.C. to grant ad-interim injunction restraining the 1st and 2nd respondent / defendant, his men, agents, representatives, staffs or any other person or persons from in any manner convening the meeting scheduled to be held on 4th of February 2017 at 11.00 a.m., at the Registered Office of the Trust at No.82, Santhome High Road, RA Puram, Chennai - 600 028 as per the EGM notice dated 10th of January 2017 issued by the 2nd defendant or conducting any other meeting of the defendant Trust pending disposal of the suit."

8.3.1 Said application came to be allowed by this Court vide order dated 03 February 2017. Para 27 thereof reads as under:-

"27. In the result, the following common order is passed in I.A.No.865/2017 and 866/2017:

- 1) the 1st and 2nd respondents are enjoined from convening an extraordinary general body meeting in pursuance of notice dated 10.01.2017 till the disposal of the suit.
- 2) It is ordered to take I.A.No.866/2017 along with the suit.
- 3) the parties shall bear their respective costs"

8.3.2 Before recording the above quoted final order, in para 25 of the said order, it is observed that :-

"....Therefore I hold that the petitioner is entitled to the relief of temporary injunction to restrain the 1st and 2nd respondents from convening a meeting based on the notice dated 10.01.2017."

8.4 On conjoint consideration of what is noted above, this Court arrives at the conclusion that the appellant in O.S.A.No.284 of 2021, who is the plaintiff of O.S.No.320 of 2017 blows hot and cold together to suit his convenience. Standing as the plaintiff in O.S.No.320 of 2017 it is his case that he be declared to be the elected President of the Trust and the defendants therein to be enjoined from interfering in the said position for the period from 30.07.2016 to 29.07.2019. That period is already over. Therefore, going by



the stand of the said appellant as the plaintiff in O.S.No.320 of 2017 he can not be heard as defendant in C.S.No.37 of 2021 that his tenure has not even commenced much less over. For this reason, this appeal needs to be dismissed.

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8.5 So far OSA No.261 of 2021 is concerned it is by the third defendant of C.S.No.37 of 2021. He has locus to file this appeal only because he was defendant in the suit. He is being defendant in the suit is also for a limited purpose because some averments are made in the suit referring him by name. When the OSA filed by the contesting defendant of C.S.No.37 of 2021 is dismissed on merits, the appellant of O.S.A.No. 261 of 2021 can not be said to be better placed. For that reason, this appeal also needs to be dismissed.

8.6 Though number of arguments are made on behalf of both the contesting sides, since these appeals need to be dismissed for the reasons recorded above, those arguments need not be gone into in detail. For that reason, those arguments are not recorded / discussed in detail in this order.

9. For above reasons, both the appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssm/1

To

The Sub-Assistant Registrar,
Original Side Section,
High Court, Madras.

+3ccs to Mr.T.Balaji, Advocate SR. No. 69092

+3ccs to Mr.Abhinav Parthasarathy, Advocate SR. No.69093

+2ccs to Mr.S.Sithirai Anandam, Advocate SR. No.68926 & 68927

+1cc to M/s.AL.Ganthimathi, Advocate SR. No.69451

O.S.A.Nos. 284 and 261 of 2021

EV (CO)

PR (05/01/2022)