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C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) Nos.2923 and 2924 of 2021
and CMP Nos.21004 and 21006 of 2021

CRP.No.2923 of 2021:

Rt.Rev.Timothy Ravinder Dev Pradeep,
The Bishop, CSI Coimbatore Diocese,
CSI Diocese Office,
256, Race Course Road, Coimbatore – 18.

.. Petitioner

Vs.

1. Rev.Charles Samraj.N
Presbyter & Chairman,
No.213, Parsonage, CSI All Souls' Church,
Race Course Road,
Coimbatore – 641 018.

2.The CSI Coimbatore Diocese
Rep. by its Administrative Committee,
CSI Diocese Office,
256 Race Course Road,
Coimbatore – 18.

.. Respondents



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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CRP.No.2924 of 2021:

The CSI Coimbatore Diocese
Rep. by its Administrative Secretary,
CSI Coimbatore Diocesan Office,
256 Race Course Road, Coimbatore – 641 018.

.. Petitioner

Vs.

1.Rev.Charles Samraj.N
S/o.Late J.Nallamuthu
CSI All Souls' Church Campus,
213, Race Course Road,
Coimbatore – 641 018.

2.Rt.Rev.Timothy Ravinder Dev Pradeep,
s/o.late Timothy Devaraj
The Bishop- CSI Coimbatore Diocese,
256, Race Course Road, Coimbatore – 641 018.

.. Respondents

PRAYER: Civil Revision Petitions filed under under Article 227 of the Constitution of India, praying to set aside the fair and final order passed in I.A.No.2 of 2021 in O.S.No.938 of 2021 dated 11.11.2021 pending on the file of the Principal District Munsif, Coimbatore.

For Petitioners
in CRP 2923/2021 : Mr. Mr.R.Viduthalai, Senior Counsel
for Mrs.R.Revathy

in CRP 2924/2021 : Mr.V.Selvaraj
for Mr.S.Bharathi Rajan



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C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

For Respondent : Mr.S.Siva Shanmugam
for R1 in both the petitions

COMMON ORDER

These two Revisions are at the instance of the defendants in OS No.938 of 2021 on the file of the Principal District Munsif, Coimbatore. Challenge is to the order of injunction granted by the learned District Munsif in IA No.2 of 2021 on 11.11.2021. The petitioner in CRP No.2923 of 2021 is the first defendant and the petitioner in CRP 2924 of 2021 is the second defendant in the said suit. The suit came to be filed by the first respondent/plaintiff seeking:

a) a declaration that the resolution of the Administrative Committee of CSI Coimbatore Diocesan Council of Coimbatore dated 19.07.2021, suspending the first respondent herein from the post of the Presbyter and Chairman of CSI All Souls' Church, Coimbatore and Chairman of CSI St. Mark's Church, Railway Colony,



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

Podanur, Coimbatore 641 021, as null and void, invalid and inoperative under Law;

b) permanent injunction for restraining the Administrative Committee of CSI Coimbatore Diocesan Council, Coimbatore, to take any policy decisions, appointments, transfers, change of correspondents apart from day to day affairs until the conduct of 34th CSI Coimbatore Diocesan Council;

c) permanent injunction for restraining the defendants from interfering with the plaintiff's functioning as the Chairman and Presbyter of CSI All Soul's Church, Race Course, Coimbatore and as the Chairman of CSI St.Mark's Church, Railway Colony, Podanur, Coimbatore, till disposal of the suit.

d) permanent injunction for restraining the defendants from acting upon the resolutions passed on 19.07.2021 under the Administrative Committee Meeting and for costs.



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

2. According to the plaintiff, the Church of South India comprises of the protestant churches in the five Southern States namely Kerala, Karnataka, Andhra, Telangana and Tamil Nadu. The said union of all protestant denomination Churches took place on 27.09.1947, as a reformed church having Synod as a representative body of the CSI. A nonprofit making Company in the name of Church of South India Trust Association was registered under Section 25 of the Indian Companies Act 1956, and the said Company was to act as a bare trustee of the properties of Church of South India which is an unregistered body. The Church of South India has its own constitution and bye laws which are independent of the Memorandum and Article of Association of the Company.

2.1. For the effective management of the Church, the entire area namely the five States in South India have been divided into 24 constituent Dioceses. The reliefs sought for in the suit on hand pertain to the Coimbatore Diocese. The Coimbatore Diocese namely the second defendant in the suit has its headquarters at Coimbatore and the Churches situate in eight Revenue Districts namely Coimbatore, Nilgiris, Thiruppur, Erode,



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

Salem, Namakkal, Dharmapuri and Krishnagiri. The Diocese of Coimbatore is administered by an Apex Body called the Diocesan Council.

2.2. The Bishop of the concerned Diocese is the President and the Members of the council are elected every three years. The 33rd Session of CSI Coimbatore Diocesan Council was constituted in November 2016 and its period expired in November 2019. As per the constitution of the Churches of South India, the Synod, the supreme apex body extended the life of the council for a grace period of three months with a direction to the first defendant, the Bishop to conduct the 34th session of CSI Coimbatore Diocesan Council.

2.3. The first defendant has sent a circular on 08.01.2020 stating that the 34th session of CSI Coimbatore Diocesan Council will be convened on 09.01.2020 at 7.00 p.m. in the CSI Bishop Appasamy College, Race Course, Coimbatore. On the same day, the first defendant also called the members of the Diocesan Council to register and file nominations to the various



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

Boards and Committees in the Industrial Service Centre, CSI Matriculation Higher Secondary School Campus, Race Course, Coimbatore. The plaintiff had filed his nomination to contest for the post of Diocesan Secretary on 09.01.2020. He also paid the required fee for the nomination. Several other persons had filed their nominations for various Boards and Committees to be elected in the 34th session of CSI Coimbatore Diocesan Council for the Triennium 2020-2023.

2.4. The first defendant/first respondent, however, did not conduct the meeting of the council on 09.01.2020. He has been tactfully delaying the conduct of free and fair election. Without convening the meeting and conducting the elections, the first respondent, the Bishop handpicked certain Members and recommended to the Synod to appoint them as Administrative Committee till such time the elections were conducted. This according to the first respondent/plaintiff is to make an illegal gain by having his own men in the position of power. After several request by several Members, the first defendant sent a communication on 16.07.2021 convening the 34th session



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

of CSI Coimbatore Diocesan Council at Salem, during the second week of
August 2021.

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2.5. The plaintiff, who came to know that the Administrative Committee is scheduled to meet on 19.07.2021 at CSI Bishop Appasamy College of Arts and Science, Race Course, Coimbatore, went there to reach out to the Bishop and seek for time to give their representations to the Committee. The plaintiff also saw several other members from various churches within the Diocese, who had assembled there to give their representations to the Bishop. It is at that time one of the Administrative Committee Members by name Nesa Merlin, picked up quarrel with the Congregation Members from Dharmapuri and at the instigation of the first defendant took the Mic Stand placed in the Hall and started hitting some of the Members, who picked up the wordily argument with him.

2.6. Commotion prevailed in the area and an FIR was lodged in Crime No.452 of 2021, by one of the Congregation Members and Honorary Secretary of CSI Praish Church, Trichy Road, Coimbatore. A counter FIR



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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was lodged by certain persons at the instigation of the first defendant with ulterior motive to suspend the plaintiff as the plaintiff, who had the support of majority of the congregations, would win the elections if and when they are held. The Administrative Committee which met again on the same day i.e.19.07.2021 passed several resolutions most of which are against the members of the congregation including the plaintiff. On the basis of the recommendations made by the Administrative Committee, the first defendant placed the plaintiff under suspension on the next date namely 20.07.2021.

2.7. The entire episode was stage managed by the first defendant and his henchmen to malign and defame the plaintiff. The action taken by the first defendant, according to the plaintiff is against all principles of natural justice. The plaintiff would also pick holes with some of the resolutions passed by the Administrative Committee on 19.07.2021 and contend that the Administrative Committee which is acting as a puppet in the hands of the first defendant is attempting to remove all persons, who according to it are acting against the interests of the first defendant.



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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2.8. The plaintiff would also add that because of the above said actions of the Administrative Committee, there is a void in the administration and it affects the thousands of beneficiaries such as students, teaching staff, non teaching staff in colleges and schools attached to the Church. It is also claimed that one of the members, who was removed, filed a suit challenging the removal, but he had chosen to withdraw the suit. The plaintiff would claim that all the resolutions against the plaintiff are with ulterior motive only to enable illegal action against the plaintiff to keep him at bay and disable him from contesting the elections. On the above pleadings, the plaintiff sought for the aforesaid reliefs in the suit. Along with the suit, the plaintiff filed an application in IA No.2 of 2021, wherein the plaintiff had prayed for the following relief.

“To declare the illegal and unconstitutional resolutions taken by the Administrative Committee of CSI Coimbatore Diocesan on 19.07.2021 at CSI Bishop Appasamy College of Arts and Science, Coimbatore as null and void that met after the



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C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

announcement of the 34th Session of CSI Coimbatore Diocesan Council scheduled in the 2nd week of April 2021 against the candidates and congregation members those who filed nominations for the office bearer and various other committees in the elections to be conducted in the 34th session of CSI Coimbatore Diocesan Council and to grant an order of Interim injunction restraining the defendants or their men or their agent or their relatives from in any manner interfere in any policy making decisions, appointments, change of correspondents or presbyters until the conduct of 34th session of CSI Coimbatore Diocesan Council but only to do the day today work and pass such further and restraining the respondents/defendants to act upon the resolution passed on 19.07.2021 under the Administrative Committee meeting.”



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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The affidavit filed in support of the application for injunction is almost a replica of the plaint. I therefore do not see the need for restating the same.

3. This application for injunction was resisted by the defendants contending that the suspension of the plaintiff as a presbyter of CSI All Soul's Church, Coimbatore, was done on the basis of the recommendations of the Administrative Committee made on 19.07.2021. The suspension was made because the plaintiff along with his henchmen barged into the meeting of the Administrative Committee and threatened the members who had gathered there. The plaintiff had also barged into the Executive Committee meeting of the Synod held at Chennai on 23.03.2021 and grabbed the Microphone and threw it on the floor in a fit of rage with the intention of intimidating the moderator, who was present at the meeting.

3.1. In view of the above said misconduct, the Administrative Committee of the CSI Coimbatore Diocese, met on 13.04.2021 and decided to take action against the petitioner. The Moderator had sent a letter to the first respondent on 16.04.2021, reporting the actions of the petitioner at the



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

meeting of the Executive Committee of the Synod at Chennai on 23.03.2021.

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Based on the said letter of the Moderator, a show cause notice was issued to the petitioner on 18.04.2021. On 02.06.2021, disciplinary proceedings were also taken. The petitioner filed OS No.629 of 2019 against the respondent seeking a declaration that the show cause notice dated 18.04.2021 is null and void and for a permanent injunction restraining the defendants, their men, agents and servants from interfering the plaintiff functioning as a Presbyter. The suit was filed against the first defendant alone and the said suit is pending.

3.2. In view of the subsequent misbehavior again on 19.07.2021 at the Administrative Committee Meeting of the Diocesan Council the first defendant/Bishop was left without any alternative but, to suspend the plaintiff/first respondent from functioning as the Presbyter of CSI All Soul's Church, Coimbatore. While the prayer in the main suit is for a declaration that the resolution suspending the plaintiff is bad, the injunctive reliefs sought for as an interim relief travels beyond the scope of the suit and seeks an injunction which would bring the entire administration of the Church to a



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

halt. It was also contended that the CSI Church or the Diocesan council being an unregistered body/unincorporated body, the plaintiff should have taken the permission of the Court under Order I Rule 8 of the Code of Civil Procedure, to sue the said body. It is also the contention of the defendants/respondents in IA No.2 of 2021 that the plaintiff cannot seek an injunction restraining the Administrative Committee from functioning while espousing his own cause namely the suspension.

3.3. It is the further contention of the defendants/respondents in IA No.2 of 2021 that the plaintiff was suspended on 20.07.2021 and the fact that the plaintiff was suspended was brought to the notice of the I Additional District Court, Coimbatore, in OS No.509 of 2019. The learned I Additional District Judge taking note of the suspension of the plaintiff and appointment of one Mr.Prince Calvin as the Presbyter of CSI All Soul's Church had while dismissing the said suit directed the election for the Pastorate to be conducted by the said Mr.Prince Calvin.

3.4. Relying upon the said judgment of the District Court, it was



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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contended that the Trial Court namely the District Munsif's Court cannot grant an injunction which would over rule the judgment of the District Court. According to the respondents in view of the specific directions given by the learned I Additional District Judge, Coimbatore, dated 14.09.2021, while recognising the suspension of the plaintiff in OS No.938 of 2021, the plaintiff cannot be favoured with an order for injunction which would enable him to function as a Presbyter of CSI All Soul's Church, Coimbatore. It is also the contention of the respondents/petitioners herein that the plaintiff has come to Court with unclean hands having suppressed the fact that the District Court had recorded his suspension and allowed the new incumbent to conduct elections.

3.5. The learned Principal District Munsif, Coimbatore, who heard the application for injunction over ruled the defence and granted an order of injunction as prayed for in IA No.2 of 2021. It is against the said order of injunction, the defendants in the suit and respondents in IA No.2 of 2021 have come up with the above Civil Revision Petitions.



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

4. Terming the order as an appealable order under the provisions of Order 43 Rule 1 (r) of the Code of Civil Procedure, the Registry had raised an objection to the maintainability of these Revisions under Article 227 of the Constitution of India. Upon hearing the counsel for the petitioners in both these revisions, I had by a separate order held that the Revision is maintainable, since it is a constitutional remedy and the availability of an alternative remedy is not a complete bar for exercise of jurisdiction under Article 227 of the Constitution of India. Mr.Siva Shanmugam, learned counsel took notice for the respondent and with the consent of all the counsel, the Civil Revision Petitions were heard finally.

5. Heard Mr.R.Viduthalai, learned Senior Counsel appearing for Mrs.R.Revathy, for the petitioner in CRP.No.2923 of 2021, Mr.V.Selvaraj, learned counsel appearing for Mr.S.Bharathi Rajan, for the petitioner in CRP.No.2924 of 2021 and Mr.S.Sivashanmugam, learned counsel appearing for the 1st respondent in both the Revisions. The 2nd respondent in both the Revisions are the petitioners in the Civil Revision Petitions. Hence, notice to them is deemed unnecessary, as they are already appearing through



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

counsel.

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6. Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioner in CRP.No.2923 of 2021 would vehemently contend that the trial Court exceeded its jurisdiction in granting the injunctive reliefs in an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, more so, when the reliefs prayed for were beyond the scope of the very suit. He would further point out that though the order made under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is an appealable order, when the trial Court dis-regards the scope of the very suit and grants an injunction, which would bring the entire affairs of the church to stand still, the petitioners can approach this Court under article 227 of the Constitution of India, invoking its supervisory jurisdiction and seek this Court's intervention to correct the error that had crept in.

6.1. Drawing my attention to the pleadings as well as the prayer in the suit, Mr.R.Viduthalai, learned Senior Counsel would submit that the allegations in the suit or allegations in the plaint are really in the nature of



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

the representative suit. From a reading of the plaint itself, it is clear that the grievance of the plaintiff is not his suspension alone, but, he wants to espouse the cause of the entire community and therefore, the suit without obtaining leave under Order I Rule 8 of the Code of Civil Procedure to sue in a representative capacity, is not maintainable. While acknowledging the fact that the permission under Order I Rule 8 of the Code of Civil Procedure is not mandatory and non-obtaining of permission may not be fatal to the suit, the learned Senior Counsel would argue that grant of injunctive reliefs based on the plaint instituted without permission would be a transgression of the powers of the Court, which would justify interference of this Court under Article 227 of the Constitution of India.

6.2. Arguing further, the learned Senior Counsel would submit that the trial Court had gone into the merits of the claim and decided on various questions which did not form the subject matter of prayer in the suit. Therefore, according to Mr.R.Viduthalai, this is a fit case where this Court has to intervene under Article 227 of the Constitution of India.



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

6.3. Mr.R.Viduthalai, learned Senior Counsel would also rely upon the judgment of the Hon'ble Supreme Court in ***Surya Dev Rai Vs. Ram Cander Rai and others*** reported in **(2003) 8 SCC 329**, wherein, the Hon'ble Supreme Court has pointed out that the jurisdiction under Article 227 of the Constitution of India or the power under Article 227 of the Constitution of India is wider than the one conferred on the High Court under Article 226 of the Constitution of India. In the sense, the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction.

6.4. Tracing the history of supervisory jurisdiction and after referring to the judgment of the Hon'ble Supreme Court in ***Waryam Singh and another Vs. Amarnath and another*** reported in ***AIR 1954 SC 215***, the learned Senior Counsel would submit that the law laid down in ***Waryam Singh and another***, cited *supra*, will hold good and as per said the judgment of the High Court in exercise of power under Article 227 of the Constitution of India can not only set aside the order, but also, substitute the order that have been passed by the trial Court or an inferior Tribunal with

19/49



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

the order that ought to have been passed. The fact that these observations in ***Surya Dev Rai*** cited *supra*, were affirmed by the larger bench vis-a-vis Article 227 jurisdiction in ***Radhey Shyam and another Vs. Chhabi Nath and others*** reported in **(2015) 5 SCC 423** is also relied upon by the counsel as a factor to buttress his submissions.

6.5. Adverting to the more recent judgment of the Hon'ble Supreme Court in ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*** reported in **(2010) 8 SCC 329**, the learned Senior Counsel would submit that the principles and guidelines in ***Waryam Singh and another***, cited *supra*, which had been repeatedly followed would still hold good in matters which relate to exercise of power by High Courts under Article 227 of the Constitution of India.

6.6. Inviting my attention to the most recent decision in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others*** reported in **(2019) 9 SCC 538**,



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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Mr.R.Viduthalai, learned Senior Counsel would submit that the Hon'ble Supreme Court had not said availability of appeal remedy under the Code of Civil Procedure would only be a near total bar for exercise of jurisdiction under Article 227 of the Constitution of India.

6.7. The learned Senior Counsel would also point out that in a recent decision of the Hon'ble Supreme Court upheld the interference made by this Court under Article 227 of the Constitution of India in ***K.P.Natrajan and others Vs. Muthalammal in Spl.Leave Petition No.2492 of 2021 dated 04.10.2021***, to set aside a decree, inasmuch as the same was obtained against the minors without proper guardian being appointed for the minors.

7. Mr.V.Selvaraj, learned counsel appearing for the petitioner in CRP.No.2924 of 2021 would submit that the learned District Munsif is actually in contempt, since he has overstepped the directions of the District Court in granting injunction restraining the defendants from interfering with the functioning of the plaintiff as a Presbyter of All Souls Church, Coimbatore, in effect over ruling the judgment of the District Court rendered



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

in O.S.No.509 of 2019 on 14th September 2021.

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7.1. Mr.V.Selvaraj, in support of his submission would rely upon the judgment of the Division Bench of this Court in *V.Ramalingam* reported in *(2006) 1 LW 421*, wherein, this Court had held that if the inferior Tribunal oversteps and grants an order which would militate against the order of the superior Court, the inferior Tribunal will be in contempt.

7.2. The learned counsel would also rely upon the judgment of the Bombay High Court reported in *1993 CRL.L.J 816*, wherein, the Bombay High Court had expressed a similar view as that of the Division Bench of this Court in *V.Ramalingam* reported in *(2006) 1 CTC 421*.

7.3. Mr.V.Selvaraj, would further point out that the very suit as filed in not maintainable, inasmuch as the permission under Order I Rule 8 of the Code of Civil Procedure has not been taken to sue the defendants in a representative capacity. In support of his submission Mr.V.Selvaraj, would rely upon the judgment of this Court in *Rev.Noble Gambeeran and others*



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

Vs. Peter P. Ponnann for himself and as representative of members of C.S.I.Christian Community reported in ***1999 (1) MLJ 392***, wherein, this Court had held that the Church of South India being an unincorporated body, a suit against it is not maintainable without getting permission under Order I Rule 8 of the Code of Civil Procedure. The suit so filed would not be a pending suit, till such time the provisions of Order I Rule 8 of the Code of Civil Procedure are complied with. Therefore, there is no question of grant of injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure in such a suit.

7.4. Support is also drawn from the judgment of the Division Bench in ***Executive Committee of the Synod Church of South India, Represented by its General Secretary Vs. Rt. Rev. Dr.V.Devasahayam, Bishop in Madras Church of South India – Madras Diocese*** reported in ***2009 (5) CTC 398***, where the Division Bench of this Court re-affirmed the proposition of law as stated by the learned single Judge in ***Rev.Noble Gambeeran and others*** cited *supra*.



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

7.5. Mr.V.Selvaraj, learned counsel, would also contend that the relief of injunction which runs counter to the directions of the District Court in its judgment in O.S.No.509 of 2019 cannot be sustained and the same will have to be set aside or set at naught forthwith. Reliance is also placed in the judgment in *Baradakanta Mishra, Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixt* reported in *1973 (1) SCC 446*, on the question of contempt.

8. To sum up Mr.R.Viduthalai, learned Senior Counsel and Mr.V.Selvaraj, learned counsel, would contend that the grant of injunction in a non-existent suit, overstepping the orders of District Court in O.S.No.509 of 2019 and granting interlocutory relief which is larger than the relief prayed for in the suit are all the ingredients of the orders impugned in this Revision, which would justify interference of this Court under Article 227 of the Constitution of India as an extreme case.

9. Contending contra Mr.S.Sivashanmugam, learned counsel



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

appearing for the 1st respondent in both the Revisions would submit that the objection that the permission under Order I Rule 8 of the Code of Civil Procedure has not been obtained will not survive, as the Church of South India is governed by Church of South India Trust Association a Company registered under Section 25 of the Companies Act, 1956. Therefore, there is no question of the suit being filed against un-incorporated body or un-registered association of persons.

9.1. In support of his submission, learned counsel would draw my attention to the judgment of this Court is *Church of South India Trust Association, represented by its Honorary Treasurer Vs. Union of India, represented by the Secretary to the Government* reported in *2021 SCC Online Madras 332*. The learned counsel would also point out that the said judgment has been affirmed by the Division Bench of this Court in W.A.No.1324 of 2021. He would further contend that permission under Order I Rule 8 of the Code of Civil Procedure is not mandatory and non-obtaining of permission under Order I Rule 8 of the Code of Civil Procedure is only an error or an irregularity, which can be cured at any point of time.



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

9.2. Therefore, the grant of injunction cannot be faulted solely on the ground of non-compliance with Order I Rule 8 of the Code of Civil Procedure. He would also rely upon the judgment of this Court in *N.Anandan Vs. Ayyanna Gounder* reported in (1993) 2 MLJ 493 and *Royal Villa Residents Association Vs. The Project Management Committee* reported in 2013 (4) CTC 205. It is also the further contention of the counsel that mere non-obtaining of permission under Order I Rule 8 of the Code of Civil Procedure will not enable this Court to interfere with the order of injunction.

9.3. On the contention of the counsel for the petitioners that the interlocutory prayer sought for is wider than the main prayer in the suit, Mr.S.Sivashanmugam, learned counsel would acknowledge the fact that the interlocutory prayer is not happily worded. He would however contend that the same can be restricted to the plaint prayer alone viz., suspension of the 1st respondent as Presbyter of All Souls Church, Coimbatore and President of St.Marks Church, Coimbaore. Mr.S.Sivashanmugam would also point



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

out that an appeal has been filed in A.S.No.491 of 2021 against the decree in O.S.No.509 of 2019 and therefore, there is no question of the trial Court having exceeded the jurisdiction in granting injunction.

10. I have considered the rival submissions. The contours of powers of this Court under Article 227 of the Constitution of India are too well recognized as early as in 1954 in *Waryam Singh's* case cited *supra*. The Hon'ble Supreme Court had held that the power under Article 227 of the Constitution of India is a power available to the High Court to not only quash the orders of the trial Court, but, also to substitute the same with orders that ought to have been passed. In *Waryam Sing* cited *supra*, the Hon'ble Supreme Court has traced the history of Article 227 of the Constitution of India which reads as follows:-

Re. 2.The material part of Article 227 substantially reproduces the provisions of section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the article also to tribunals. That the Rent Controller and the District Judge exercising jurisdiction under the Act are tribunals



WEB COPY



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

cannot and has not been controverted. The only question raised is as to the nature of the power of superintendence conferred by the article. Reference is made to clause (2) of the article in support of the contention that this article only confers on the High Court administrative superintendence over the subordinate courts and tribunals. We are unable to accept this contention because clause (2) is, expressed to be without prejudice to the generality of the provisions in clause (1). Further, the preponderance of judicial opinion in India was that section 107 which was similar in terms to [section 15](#) of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. In this connection it has to be remembered that section 107 of the Government of India Act, 1915, was reproduced in the Government of India Act, 1935, as [section 224](#). [Section 224](#) of the 1935 Act, however, introduced sub-section (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to, question any judgment of any inferior court which was not otherwise subject to appeal or



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

*revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that sub-section (2) to section 224, of the 1935 Act has been omitted from Article 227. This significant omission has been regarded by all High Courts in India before whom this question has arisen As having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 186 1, and section 107 of the Government of India Act, 1915. See the cases referred to in -*Moti Lal v. The State* through *Shrimati Sagrawati(1)*. Our attention has not been drawn to any case which has taken a different view and, as at present advised, we see no reason to take a different view.*

11. The Hon'ble Supreme Court further went on to conclude that the power of superintendence conferred by Article 227 of the Constitution of India as pointed out by *Harries, C.J* in ***Dalmia Jain Airways Ltd Vs. Sukumar Mukherjee*** should be exercised sparingly and only in appropriate



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

cases, in order to keep the sub-Court within the bounds of their authority and not for correcting mere errors. This view of the Hon'ble Supreme Court has been re-affirmed in ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*** reported in **(2010) 8 SCC 329**, in the following words:

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

12. The Hon'ble Supreme Court in *Shalini Shyam Shetty and*



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

another cited *supra* pointed out that various situations may arise before the Courts and whether to exercise the supervisory jurisdiction or not is a call that has to be taken by the Court on the facts and circumstances and while laying down the broad parameters, the Hon'ble Supreme Court observed as follows:-

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

13. The Hon'ble Supreme Court also pointed out that the power is discretionary and can be exercised on its equitable principles. While deciding the maintainability of this Revision, I had referred to the judgment of the Hon'ble Supreme Court in ***L.Chandrakumar Vs. Union of India*** reported in ***AIR 1994 SC 1266***, wherein, it was held that the powers vested in High Court under Articles 226 and 227 of the Constitution of India



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

cannot be taken away even by constitutional amendments.

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14. In *Radhey Shyam and another Vs. Chhabi Nath and others* reported in *(2015) 5 SCC 423*, a three Judge Bench of the Hon'ble Supreme Court examined the correctness of the judgment of the Hon'ble Supreme Court in *Surya Dev Rai* cited *supra* and affirmed the conclusions of the Bench insofar as the scope of power under Article 227 of the Constitution of India are concerned, while it did not agree with the conclusions of the Bench with reference to jurisdiction under Article 226 of the Constitution of India. While doing so, the three Judge Bench pointed out that the jurisdiction under Article 227 of the Constitution of India would extend to not only quashing of order but also substitution of orders.

15. The refusal to exercise the supervisory jurisdiction or constitutional power by the higher Court when there is a statutory remedy available under the statute viz., the Code of Civil Procedure, in the case on hand, is more of a matter of discipline or self-imposed restriction than a rule of law. Once it is held that the power vested in the High Court under the



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

Constitution cannot be taken away even by constitutional amendment, an appeal provision in an enactment like the Code of Civil Procedure, cannot denude the power of the High Court from exercising the jurisdiction. All that is to be ensured is that the interference is kept at the minimum that too only in exceptional cases or extraordinary cases. The question therefore to be addressed is whether the case on hand is an exceptional or extraordinary case to enable interference under Article 227 of the Constitution of India.

16. Both Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioner in CRP.No.2923 of 2021 and Mr.V.Selvaraj, learned counsel appearing for the petitioner in CRP.No.2924 of 2021 would vehemently contend that the manner in which the learned District Munsif sought to brush aside the requirements for permission under Order I Rule 8 of the Code of Civil Procedure and the binding nature of the judgment in O.S.No.509 of 2019 are so shocking, that it would be a fit case where the power under Article 227 of the Constitution of India has to be invoked.

17. Their contention that the interim relief sought for is wider than the



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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main relief has to be, to a certain extent, toned down by Mr.S.Sivashanmugam's concession or stand taken by him that he is ready to restrict the interim relief to the suspension of the petitioner as Presbyter of All Souls Church and President of St.Mark Church at Coimbatore.

18. On the first submission of Mr.S.Sivashanmugam regarding the requirement of permission to sue under Order I Rule 8 of the Code of Civil Procedure, in a case against Church of South India, I find myself unable to agree with the contention of the counsel for the following reasons:-

The decision relied upon by him in *Church of South India Trust Association, represented by its Honorary Treasurer Vs. Union of India, represented by the Secretary to the Government* reported in *201 SCC Online Madras 332* arose in the writ jurisdiction, where the challenge was to the investigation by the Serious Frauds Investigation Organization under the Companies Act. The contention that was raised was Church of South India is not a Company, therefore, the investigation cannot happen. While over ruling that objection, Hon'ble Mr.Justice R.Mahadevan observed that Church of South India Trust Association is a Company registered under

34/49



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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Section 25 of the Companies Act, 1956 equivalent to Section 8 of the Companies Act 2013. Therefore, the investigation of Serious Frauds Investigation Organization cannot be said to be without jurisdiction.

19. In the case on hand, Church of South India Trust Association is not a party to the suit. The suit is laid by the plaintiff against the Bishop Rt.Rev.Timothy Ravinder Deve Pradeep, CSI Coimbatore Diocese and CSI Coimbatore Diocese represented by its Administrative Committee. Therefore, the plaintiff has chosen to sue the Church of South India, CSI Diocese, Coimbatore and not Church of South India Trust Association, which is Company registered under Section 25 of the Companies Act, 1956.

20. The Church of South India is a congregation of Churches in five southern states. It is divided into 25 Dioceses for the purpose of management. Even, in the Articles of the Association of Church of South India, it is very clearly stated that the Church of South India Trust will be incharge of the properties of the Church and the constitution of Church of South India makes it very clear that the Church of South India will be an



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

association of Churches in five Southern states and Church of South India Trust Association will be incharge of the properties and finances of the Church. The Churches within the five southern states have been divided into 24 diocese for the purpose management and are governed by the apex body called a Diocesan Council, while the Church of South India is governed by apex body called Synod.

21. There is a separate constitution for Church of South India and for each of the Diocese. The Bishop will be the head of the Diocesan Council and he has disciplinary powers over the other officers like Ministers, Presbyters and others. The Synod, which is the supreme body of Church of South India has got power to appoint Bishops. The Pastorates are a smaller association of Churches which come beneath the Diocesan Council.

22. The structure of Church of South India is as follows:

Individual Churches smaller group of churches called Pastorate, a group of Pastorates called Diocese which is governed by Diocesan Council and the Synod functions as the supreme body. These four stages form the



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

WEB COPY

religious part of Church of South India. Whereas, the Church of South India Trust Association, which is a Company, deals with the financial aspects. All the properties of the Church vest in the Company and the Company was formed for the management of the properties of the Churches and their finances. The functions of the Trust Association and the Diocese are totally different and there is no intermingling of the two. Therefore, the very fact that the Trust Association has been held to be a Company cannot be a ground to conclude that a Diocese or the Church of South India can be sued as a Company.

23. On the second argument of the counsel that the permission under Order I Rule 8 of the Code of Civil Procedure is not mandatory and it can be obtained at any point of time, the law is too well settled. This Court as well as the Hon'ble Supreme Court held that a suit cannot be thrown out for non-obtainment of permission under Order I Rule 8 of the Code of Civil Procedure. But, at the same time, whether a suit which requires a permission under Order I Rule 8 of the Code of Civil Procedure, instituted without such permission could be said to be pending, so as to enable the



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

Court before which it is pending to grant an interlocutory order under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure is another question.

24. It is this question which has been answered by this Court in ***Rev.Noble Gambeeran and others*** cited *supra*, Hon'ble Mr.Justice S.S.Subramani while considering the question whether in such a suit instituted without permission under Order I Rule 8 of the Code of Civil Procedure, an injunction can be granted held as follows:-

24. In this case, Rev. Y. Williams is the name of the Honorary Secretary representing the Executive Committee. He becomes representative of the Executive Committee only when he is allowed to represent the Executive Committee by filing an application and it becomes a representative suit only after issuing a notice on the application. As on date, there is no representative suit against this second defendant at all. If there is no suit, naturally, it also follows that no injunction can be granted. Order 39, Rule 1, C.P.C; provides that an injunction must be against a party to the suit.



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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25. That was also a Revision filed under Article 227 of the Constitution of India questioning the order granting injunction in a matter relating to the Diocese. This view of the Hon'ble Mr. Justice S.S. Subramani was re-affirmed by the Division Bench of this Court in Executive Committee of the Synod of **Rev. Noble Gambeeran and others** cited *supra*, wherein, the Division Bench held that the permission is mandatory and non-obtainment of permission will result in dismissal of the suit.

26. I am therefore of the considered view that the contention of the learned counsel that because the Hon'ble Supreme Court and this Court have held that permission under Order I Rule 8 of the Code of Civil Procedure, is not mandatory and it can be obtained at any point of time, grant of injunction in a suit which requires permission under Order 1 Rule 8 of the Code of Civil Procedure, without such permission having been obtained is justified cannot be accepted.

27. The other question which has to be examined is whether the learned District Munsif in granting the injunction as prayed for has over



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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stepped the order of the District Court in OS No.509 of 2019. OS No.509 of 2019 was filed by two individuals representing the disqualified candidates of CSI All Soul's Church, Coimbatore, seeking a declaration that the disqualification of about 50 members by the first respondent herein as the Presbyter of CSI All Soul's Church, Coimbatore, is ultra virus, void and not valid and binding and for a mandatory injunction for conducting elections to the Pastorate and the Committee of the Diocesan Council Members from CSI All Soul's Church, Coimbatore afresh. The essential grievance of the plaintiff in that suit was that they were removed as Members of the Church without following the due process of law by the first respondent herein and thus their removal is illegal.

28. The first respondent herein as the second defendant in the suit resisted the suit raising various contentions. It is during the pendency of the said suit, the order of suspension came to be passed on 20.07.2021, suspending the first respondent as the Presbyter of the CSI All Soul's Church, Coimbatore. Because of the said suspension and since the essential grievance of the plaintiff in that suit was the action of the first respondent



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

herein in removing them as Members, the suit came to be dismissed as having become infructuous as the first defendant in the said suit, namely the Bishop of Coimbatore Diocese had undertaken to conduct fresh elections for the Pastorate Committee and Diocesan Council. The learned Additional District Judge recording the submissions of the parties disposed of the suit with the following directions:

“In the result the suit is dismissed without cost but with observation as follows:

a) To conduct fresh election to the Pastorate Committee and Diocesan council members from CSI All Soul’s Church, Coimbatore has to be conducted by the new Cairman/ Presbyter Rev. Prince Calvin for the remaining period of the Triennium 2019-2022, within four months from the date of this judgment.

b) Fresh election has to be conducted after giving fair opportunity to all the eligible voters in consonance with the Rules and procedures.



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C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

c) The Standard operating procedure of the State

*Government with regard to Pandemic situation, for the
smooth conduct of election and adhere all safety
precautionary methods for the voters and others.*

29. The Court also recorded the submission of the counsel for the second defendant namely the first respondent herein to the effect that he had requested the elections may be conducted after the pandemic within six months. Therefore, the second defendant who was the party to the proceedings in OS No.509 of 2019 had accepted the appointment of one Mr.Prince Calvin, as the Presbyter in the place of the first respondent herein and agreed to the conduct of elections by him. The judgment in OS No.509 of 2019 came to be passed on 14.09.2021 and the present suit was instituted on 23.09.2021, i.e. within 9 days from the date of the disposal of OS No.509 of 2019, unfortunately there is no whisper about the suit in OS No.509 of 2019 and the judgment therein in the present suit. This failure to disclose the suit in OS No.509 of 2019 and the result in the present suit is also taken as a ground to contend that the plaintiff has not come with clean hands,

42/49



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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therefore, he should not be favoured with an order of injunction.

30. Be that as it may, as of now there is a judgment of the I Additional District Court which is a superior Court directing elections to be conducted by Mr.Prince Calvin, as the Presbyter of the CSI All Soul's Church, Coimbatore and there is an order of injunction by the learned District Munsif an inferior Tribunal restraining the Bishop, who is the first defendant in OS No.509 of 2019 from interfering with the plaintiff's functioning as a Presbyter of CSI All Soul's Church, Coimbatore. There is a clear conflict between the two orders which are as of today in force. No doubt, Mr.S.Sivashanmugam, learned counsel would contend that an Appeal filed by the first respondent against the judgment in OS No.509 of 2019 is pending on the file of this Court. He would also fairly submit that no interim order has been obtained in the said Appeal. Therefore, as of today there are two conflicting orders.

31. The learned District Munsif would observe that the judgment in CS No.509 of 2019 cannot be projected to justify the suspension of the



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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plaintiff. The suspension of the plaintiff is one thing and the judgment which is a consequence of the suspension is another. But at the same time, the Court cannot be a party to create a situation where there are orders which run counter to each other. Once the Higher Court or a Superior Tribunal had taken note of a prevailing factual situation and has passed a particular order, the inferior Tribunal cannot alter the factual situation, so as to render the Superior Tribunal's order a nullity or unenforceable. By granting an order of injunction restraining the first defendant Bishop from interfering with the plaintiff's functioning as the Presbyter of CSI All Soul's Church, Coimbatore, the learned District Munsif has in effect over ruled the judgment or prevented the directions in OS No.509 of 2019 issued by the I Additional District Judge from being enforced.

32. Comity of Courts and discipline among hierarchy of Courts will have to be maintained. The parties may ask for various reliefs, but the Courts must be cautious and cannot be made a tool in the hands of unscrupulous parties and render the orders of Superior Tribunals unenforceable by granting orders of injunction. I am therefore of the clear



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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opinion that the District Munsif in granting an injunction which would run counter to the directions in OS No.509 of 2019 exceeded its jurisdiction and over stepped his powers.

33. Even on the requirement of Order I Rule 8 of the Code of Civil Procedure, the learned District Munsif had gone astray and held that because Order I Rule 8 is not mandatory hence an injunction can be granted. While deciding the question whether Order I Rule 8 is mandatory or the suit to be thrown out for failure to comply with Order I Rule 8, the Courts did not examine the question as to whether an injunction could be granted in such suits. In the two decisions which have been relied upon by Mr.Selvaraj, namely the decision in *Rev.Noble Gambeeran and others Vs. Peter P. Ponnann for himself and as representative of members of C.S.I.Christian Community* reported in *1999 (1) MLJ 392*, and *Executive Committee of the Synod Church of South India, Represented by its General Secretary Vs. Rt. Rev. Dr.V.Devasahayam, Bishop in Madras Church of South India – Madras Diocese* reported in *2009 (5) CTC 398*, this Court had specifically adverted to the grant of injunction and held that an injunction

45/49



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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cannot be granted in a suit which requires permission under Order I Rule 8 of the Code of Civil Procedure.

34. I do not think I should venture into whether the reliefs sought for in the injunction application are wider than the relief sought for in the suit, in view of the submission made by Mr.Sivashanmugam, that he has got instructions to restrict the interim relief only to the suspension of the petitioner as a Presbyter of CSI All Soul's Church, Coimbatore and as a President of CSI St. Mark's Church, Coimbatore. For the foregoing reasons, I find that the order of injunction granted by the Trial Court cannot be sustained and will have to be interfered with. I am convinced that the action of the learned District Munsif in granting an injunction is patently perverse and would lead to an unenviable situation where there are two orders of Courts which conflict with each other. Therefore, the need for exercise of the power under Article 227 of the Constitution of India, really exist and if the power is not exercised, the results would be really disastrous.

35. Mr.S.Siva Shanmugam would also point out that after the order of



C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

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injunction, the petitioner has been reinstated as the Presbyter of the CSI All Soul's Church, Coimbatore and as the President of CSI St. Mark's Church of Coimbatore, by the petitioner in CRP No.2923 of 2021. Such restoration in compliance with the orders of the Court, in my opinion, will not confer any right on him to defeat the challenge to the order of injunction. Once it is found that the orders of injunction ought not to have been granted, a compliance with the order till the challenge is made cannot be a ground to sustain the order or sustain the benefits arising out of the order.

36. In view of the above, the Civil Revision Petitions are **allowed**, the orders of injunction granted by the Trial Court will stand set aside and the application in IA No.2 of 2021 in OS No.938 of 2021 will stand dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

23.12.2021

Index: Yes/No
Internet: Yes/No
Speaking order/Non Speaking order
jv/dsa

47/49



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C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

To

1. The Principal District Munsif,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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C.R.P. (PD) Nos.2923 & 2924 of 2021
and CMP Nos.21004 & 21006 of 2021

R.SUBRAMANIAN, J.

jv/dsa

Civil Revision Petition (PD) Nos.2923 and 2924 of 2021
and CMP Nos.21004 and 21006 of 2021

23.12.2021