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A.Nos. 1245 to 1248 of 2022

And

C.S.No. 628 of 2019

C.V.KARTHIKEYAN, J.

All these applications have been filed by the plaintiffs in C.S.No. 628 of 2019 seeking to withdraw O.S.No. 5150 of 2020 (transferred C.S.No. 334 of 2013) now pending on the file of the VI Additional City Civil Court, Chennai, to the file of this Court to be tried along with C.S.No. 628 of 2019 (**A.No. 1245 of 2022**) and to similarly withdraw O.S.No. 325 of 217 on the file of the V Assistant City Civil Court, Chennai to the file of this Court to be tried along with C.S.No. 628 of 2019 (**A.No. 1247 of 2022**).

2. The other two applications namely, A.No. 1246 of 2022 and 1248 of 2022 have been filed seeking an order of stay of all further proceedings in O.S.No. 5150 of 2020 and O.S.No. 325 of 2017 respectively.

3. A common affidavit had been filed in support of all the four applications. In the said affidavits, which had been filed jointly by both



the plaintiffs, it had been stated that the first plaintiff had filed C.S.No. 334 of 2013 before this Court which suit had been transferred to the VI Additional City Civil Court, Chennai and renumbered as O.S.No. 5150 of 2020 claiming the reliefs of declaration that the first and second defendants therein namely Shri Vallabhacharya Vidya Sabha represented by its Secretary and Dwarakadas Govardhandas Vaishnav College, represented by its Secretary, are not entitled to violate conditions and stipulations contained in the Settlement Deed dated 15.10.1964 which was executed by the family of the donors in favour of the first defendant and for permanent injunction restraining the first, second and third defendants from alienating or putting up construction in the suit schedule property and for permanent injunction against the sixth and seventh defendants from granting any planing permission or granting affiliation for any of the courses to be conducted by M.O.P.Vaishnav College for Women and for a declaration that the plaintiff continues to be a life member of the first defendant and for permanent injunction restraining the first defendant or the first to third defendants from interfering with his duties and from allowing the fourth defendant M.O.P. Vaishnav College for Women from admitting students or running any courses and



for mandatory injunction to restore the status of the plaintiffs as joint Secretary.

4. It had been further stated that the second plaintiff along with three others had filed O.S.No. 325 of 2017 on the file of the V Assistant City Civil Court, Chennai, seeking a declaration that Manoj Kumar Sonthalia had forfeited his right to remain as a Secretary of the first defendant and mandatory injunction to remove him as Secretary and for a declaration that there was no meeting held on 09.05.2015 and declare such meeting as invalid and for a declaration that the amendment to the Bye-Laws and Rules and Regulations of the first defendant as ultra vires and for a declaration that any amendment contrary to the Societies Registration Act 1860 or Tamilnadu Societies Registration Act 1975 are invalid and for permanent injunction restraining the first defendant and office bearers from invoking the amended rules and for a declaration that the amendment shall not be applicable to the Chief Donor Family and for permanent injunction restraining the first defendant from interfering with the functioning of the office bearers of the Chief Donar Family and from functioning as co-opted members of the executive council of the first defendant.



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5. It had been further stated that the present suit in C.S.No. 628 of 2019 had been filed by the two plaintiffs against Shri Vallabhacharya Vidya Sabha, Chennai represented by its Secretary seeking a declaration that a notice dated 07.10.2019 issued by the defendant regarding elections to Executive Council of the defendant on 02.11.2019 as invalid and a mandatory injunction directing the defendant to conduct elections by appointing a retired Judge of the High Court as Election Officer and for permanent injunction restraining the defendant from holding election either on 02.11.2019 or on any other date contrary to the constitution of the defendant Sabha and for permanent injunction restraining the existing office bearers from functioning as members of the Executive Committee till a valid election takes place.

6. It had been further stated in the affidavit after extracting the reliefs sought in the three suits and after stating about the interim orders granted, that the issues involved in all the suits are one and the same and that the documents relied and oral evidence may be common and therefore to avoid multiplicity of proceedings and conflict of decisions with respect to the same subject matter, it would only be appropriate that



all the three suits are tried together. It was therefore sought that the two suits now pending before the City Civil Court should be transferred to this Court and tried along with C.S.No. 628 of 2009.

7. A counter affidavit has been filed by the first respondent/defendant Shri Vallabhacharya Vidya Sabha, Chennai wherein, again after extracting the reliefs sought in the three suits, it had been stated that it would be evident that the three suits are not connected in any manner and that the issues are totally different and that therefore, the applications will have to be dismissed. It had been stated that the parties to the three suits are not the same, the causes of action are different, the issues are different and the reliefs sought are also different. It had been stated that the only intention of the petitioners was to hound the charitable institutions and office bearers with repeated suits and countless applications with oblique motive. It had been stated that joint trial is not warranted in law or on facts. It had also been stated that the plaintiffs are not even members of the defendant Sabha.



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8. Even though the counter affidavit extends to touch upon the merits of the averments made in the plaint in C.S.No. 628 of 2019, to consider the issues in the present applications extracting those portions may not be required.

9. It had been finally stated that the applications have not been filed with bona fide intention and it had therefore been stated that the applications should be dismissed.

10. A common counter affidavit was also filed by the third and fourth respondents in A.Nos. 1247 & 1248 of 2022. It had been stated that the defendants in O.S.No. 325 of 2017 are not parties to C.S.No. 628 of 2019 and therefore, the said Original Suit cannot and should not be transferred from the City Civil Court to this Court. It had been stated that the issues in the two suits are totally different and the parties are also different and the documents relating to determination of the issues are also different. It had been therefore stated that the applications should be dismissed.



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11. A counter affidavit had also been filed by the fourth respondent and it had been stated that A.Nos. 1245 & 1246 of 2022 seeking to transfer O.S.No. 5150 of 2020 to the file of this Court has to be dismissed because the prayer and cause of action in the two suits, namely, O.S.No. 5150 of 2020 and C.S.No. 628 of 2019 are totally different. It had been stated that the issues will have to be decided independently and there is no conflict of interest with the issues in each suit. It had been stated that the application had been filed only to delay further proceedings in O.S.No. 5150 of 2020. It had therefore been stated that the Applications should be dismissed.

12. Heard arguments advanced by Mr.R.Thiagarajan, learned counsel for the applicants and Mr.S.Vijayaraghavan learned counsel for the defendants in C.S.No. 628 of 2019 and Mr.Babu Rangaswamy, learned counsel for the fourth respondent in A.Nos. 1245 & 1246 of 2022, Mr.M.Palanimuthu, learned counsel for the seventh respondent in A.Nos. 1245 & 1246 of 2022 and Mr. Sriram Venkatavarathan, learned counsel for the third and fourth respondents in A.No. 1247 of 2022.



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13. It is the contention of Mr.R.Thiagarajan, learned counsel that there are three suits one in the Original Side of this Court and another which was in the Original Side of this Court but subsequently transferred to the City Civil Court and the third instituted in the City Civil Court. It is contended that the issues in all the three suits are the same and therefore to be maintain consistency in the orders passed and to facilitate the parties, since the evidence is common, the three suits should be tried together.

14. This opinion advanced is seriously disputed by Mr. S.Vijayaraghavan, learned counsel for the defendants in C.S.No. 628 of 2019 and also all the other learned counsels, namely, Mr.Babu Rangaswamy, learned counsel for the fourth respondent in A.Nos. 1245 & 1246 of 2022, Mr.M.Palanimuthu, learned counsel for the seventh respondents in A.Nos. 1245 & 1246 of 2022 and Mr. Sriram Venkatavarathan, learned counsel for the third and fourth respondents in A.No. 1247 of 2022, who in one voice stated that the issues in the three suits are totally different and that there is no conflict of interest and that the parties are different and that the evidence advanced would be different



and therefore transfer of the two suits now pending before the City Civil Court is not warranted.

15. I have carefully examined the records.

16. Clause 13 of the Letters Patent is as follows:-

“13. Extraordinary original civil Jurisdiction – And we do further ordain that the said High Court of Judicature at Madras shall have power to remove, and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, subject to its superintendence when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.”



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17. The two conditions required to transfer suits to the Original Side are agreement among the parties and/or in the interest of Justice.

18. The reliefs sought in the three suits are as follows:-

“C.S.No. 334 of 2013 [O.S.No. 5150 of 2021 on the file of VI Additional City Civil Court, Chennai]:

“(a) for a declaration that the 1st and 2nd defendants, their men, agents, servants or person or persons claiming through them are not entitled to violate the conditions and stipulations contained in the Settlement deed, dated 15.10.1964 executed by the Donors family in favour of the first defendant;

(b) For a permanent injunction restraining the defendants 1 to 3, their men, agents, servants or person or persons claiming through them from encumbering or alienating or dealing with the properties covered by the Settlement Deed, dated 15.10.1964 either by way of sale, mortgage, lease



or Joint Development, etc.

(c) For a permanent injunction restraining the defendants 1 to 3, their men, agents, servants or person or persons claiming through them from putting up any illegal or unauthorised construction in the suit schedule mentioned property and offer the same to the 4th and 5th defendants for running M.O.P. Vaishnav College for Women;

(d) For a permanent injunction restraining the 7th defendant, its men, agents, servants or person or persons claiming through it from granting any affiliation to any of the courses to be commenced and to be conducted by M.O.P.Vaishnav College for Women in the D.G.Vashnav College premises contrary to the wishes of the Donors as expressed in the Settlement Deed, dated 15.10.1964;

(e) For a permanent injunction restraining the 6th defendant, its men, agents, servants or person or persons claiming through it from considering any planning permission application submitted by the defendants 1 to 3 and 5 in



respect of the suit property for putting up any construction in derogation of the stipulations contained in the Settlement Deed, dated 15.10.1964 executed by Donors' Family;

(f) for a declaration that the plaintiff continues to be the life member of the 1st defendant and is entitled to get all the rights, privileges, benefits conferred upon the life member of the 1st defendant Sabha;

(g) for a permanent injunction restraining the 1st defendant, or its men, agents, servants, person or persons authorised by it from interfering with the rights of the plaintiff to discharge its duties as Secretary of the 1st defendant and Joint Secretary of the second defendant;

(h) For a mandatory injunction directing the defendants 1 -3 to restore the status of the plaintiff as Joint Secretary of the D.G.Viashnav College and a member of the Executive Committee of the 1st defendant on a date to be fixed by this Hon'ble Court;



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(I) For a permanent injunction restraining the defendants 1-3 their men, agents, servants, person or persons authorised by them from allowing the 4th defendant M.O.P. College or anyone authorised by it from allowing the students to be admitted in Course to be conducted by the 4th defendant in the premises of 1st and 2nd defendants herein;

(j) for a permanent injunction restraining the defendants 1-3 their men, agents, servants, person or persons from permitting the 4th and 5th defendants to run any courses conducted by the MOP Vaishnav College for Women, the 4th defendant in the premises belonging to the 1st and 2nd defendants in violation of the objects of the Settlement Deed, dated 15.10.1964;

(k) For a permanent injunction restraining the 4th defendant from admitting any students for any courses in the premises Gokul Bagh, belonging to the 1st and 2nd defendants except in accordance with law.”



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O.S.No. 325 of 2017 / V Assistant City Civil Court, Chennai/:

“(a) For a declaration that Manoj Kumar Sonthalia has forfeited his rights to remain as the Secretary of the 1st defendant on account of his malfeasance, misfeasance, misappropriation of funds and breach of trust and thereby incurred the disqualification and disabilities to continue as Secretary of the 1st defendant and consequently for a mandatory injunction directing removal of the existing Secretary of the 1st defendant Manoj Kumar Sonthalia and appoint in his place a Retired High Court Judge or a Retired Senior District Judge as Administrator of the 1st defendant;

(b) for a declaration that there was no valid meeting of the 1st defendant convened and held on 09.05.2015 in accordance with the Constitution of Shri Vallabhacharya Vidya Sabha and declare the same as illegal, invalid, non-est in the eyes of law and the same shall not be binding upon the Members of the 1st defendant;



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(c) For a declaration that the amendment to the Bye-laws and the Rules and Regulations of the 1st defendant and addition of Rule 13(a) and 13(b) of the 1st Defendant is ultra vires of the Constitution, illegal, invalid and non-est in the eyes of law and consequently the same shall not be binding upon the Members of the 1st defendant;

(d) For a declaration that any amendment effected contrary to the Societies Registration Act, 1860, the Tamil Nadu Societies Registration Act, 1975 and the Tamil Nadu Registration Rules, 1978 as ultra vires, illegal, invalid, non-est in the eyes of law and consequently declare those Resolutions as bad in law and consequently restrain in the 1st defendant from implementing any of those resolutions;

(e) for a permanent injunction restraining the 1st defendant and the Office Bearers from enforcing or invoking the alleged amended Rule 13(a) and 13(b) of the 1st Defendant Society as against the Members of the 1st defendant, since



the same is illegal, invalid, non-est in the eyes of law and consequently not be binding on the Members;

(f) for a declaration that the proposed alleged amendment 13(a) and 13(b) of the 1st defendant Constitution with regard to the age limit shall not be applicable to the Chief Donor Family and consequently restrain the 1st and 5th defendants from giving effect to the alleged amendment, assuming without conceding it to be valid;

(g) For a permanent injunction restraining the 1st defendant from interfering with the functioning of the Chief Donor's Office Bearers holding offices, except in accordance with law; and

(h) for a permanent injunction restraining the 3rd and 4th defendants from functioning as Co-opted Members of the Executive Council of the 1st defendant."

C.S.No. 628 of 2019 / Original Side, Madras High Court/:



“(a) For a declaration that the notice dated 07.10.2019 issued by the defendant, regarding the conduct of the election to the Executive Council of the defendant Sabha on 02.11.2019, is illegal, invalid, and non-est in the eyes of law and consequently not binding on the members of the defendant Sabha;

(b) For a Mandatory injunction directing the defendants to hold and to conduct Elections and selection of its members to the Executive Council by appointing a retired Judge of the Hon’ble High Court, Madras as Election Officer / Administrator in accordance with the constitution of the Sabha after finalisation of eligible members list strictly in accordance with the Constitution of Shri Vallabhacharya Vidya Sabha;

(c) For a permanent injunction restraining the defendant or any one authorised by it from holding election on 02.11.2019 to the selection and election of its members to the Executive Council or any other subsequent date or dates contrary to the constitution of the defendant



Sabha; and

(d) For a permanent injunction restraining the existing office bearers from functioning as the members of the Executive Council till such time a valid election and selection takes place in accordance with the constitution and bye laws of the defendant Sabha.”

19. Two plaintiffs Bharatkumar K.Shah and Rajesh R.Desai have filed C.S.No. 628 of 2019. This suit was presented on 23.10.2019. The actual cause to institute this suit arose on 07.10.2019 when a notice was issued regarding conducting of elections to the Executive Council to the defendant Sabha and scheduled on 02.11.2019. The reliefs sought were that the said notice is non est and invalid and that a Judge Commissioner should be appointed to conduct the elections. Thus the only issue which has to be examined is about the right to so issue the notice dated 07.10.2019 and the manner in which the elections to the Executive Council should be conducted.

20. The cause started with the date of issuing the notice, namely,



21. The first plaintiff Bharat Kumar K.Shah had also filed C.S.No. 334 of 2013 nearly about 9 years back. That suit had been transferred to the City Civil Court and renumbered as O.S.No. 5150 of 2020 and now is pending before the VI Additional City Civil Court, Chennai. Even before, it was transferred to the City Civil Court, issues had been framed and the plaintiff had been examined as a witness and cross examined. On the side of the defendants, endorsement has been made that there is no oral evidence. Thus arguments alone will have to be advanced. A duty is cast on the counsel for the plaintiff to commence advancing arguments.

22. The cause of action for that suit according to the plaintiff, arose on 25.03.2000, when according to him, he was inducted as a member of the first defendant and on various dates when according to him he had exercised his right as a member and on 30.12.2010 when the first defendant issued a notice regarding a meeting to be held on 09.02.2011 and subsequently. The entire cause surrounds membership of



the plaintiff and the primary issue to be decided is whether he is a member or not a member of the first respondent Society, namely, Shri Vallabhacharya Vidya Sabha. That suit was verified at Chennai on 29.04.2013. The cause commenced from the date when the plaintiff alleged that he is a member and it ended on the date when the suit was verified, namely, 29.04.2013.

23. To reiterate the cause of filing C.S.No. 628 of 2019 arose after 6 years when notice was issued on 07.10.2019 regarding election of the Executive Council of the defendant. Therefore, it is very clear that the cause of action for instituting the two suits, namely, C.S.No. 628 of 2019 and C.S.No. 334 of 2013 (O.S.No. 5150 of 2020) are totally different and not at all connected with each other.

24. The only common factor is that the plaintiff appears to have had a chronic habit to move from forum after forum to file suits questioning letters/notices issued by the defendant. When he instituted the suit in C.S.No. 334 of 2013, he had come to Court with a specific cause of action. He has to lead evidence to establish his right to seek the



relief sought. The trial has commenced. The trial had ended. It is now the burden of the advocates to argue the case. Therefore, there is no necessity for the transfer of O.S.No. 5150 of 2020 to the file of this Court to be tried along with C.S.No. 628 of 2019. There is no issue which remains to be tried. The parties have tendered their evidence relating to the issues framed. The plaintiff had adduced evidence in chief and had also been cross examined.

25. In view of this particular reasoning since the causes of action are different, the issues are different, I hold no purpose will be served in transferring O.S.No. 5150 of 2020 to the file of this Court and therefore, A.Nos. 1245 & 1246 of 2022 being vexatious and frivolous are dismissed with costs.

26. The second plaintiff in C.S.No. 628 of 2019 has to outdo the first plaintiff. He had therefore instituted an earlier suit in O.S.No. 325 of 2017. He had chosen as his forum, the City Civil Court at Chennai. That suit had been filed by him along with three other plaintiffs. Those three other plaintiffs have not filed any affidavits granting consent for the suit



to be transferred from the City Civil Court to the file of this Court. When four plaintiffs join together to institute one common suit, one among them alone cannot state that the said suit has to be transferred from the Court where it is pending. All four of them had taken a conscious decision to institute the suit in the City Civil Court, Chennai. All four must agree for transfer of the suit. There is no such agreement.

27. The cause of action for the four plaintiffs in that suit actually arose only on 02.01.2016 when a notice of Annual General Meeting of the first defendant to be convened on 23.01.2016 was issued and when a subsequent notice was issued on 16.11.2016 regarding a meeting schedule on 26.11.2016. The cause ended in January 2017 when the suit was verified and presented before the City Civil Court, Chennai. Thus the issue again is entirely different. The relief sought was that the Secretary of the first defendant had forfeited his right. That issue has to be decided along with whether the amendment to the rules was proper or not. Those issues will have to be examined on the basis of the documents presented therein.



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28. In both the suits, namely, C.S.No. 334 of 2013 (O.S.No. 5150 of 2020) and O.S.No. 325 of 2017, the respective plaintiffs have not filed any application under Order 2 Rule 2 CPC, seeking permission to institute a subsequent suit for any specific relief or for further reliefs. However, since it is incumbent to conduct Annual General Body Meeting or to conduct elections, notices in that regard have been periodically issued and the plaintiffs have merrily filed suits at various forums.

29. It is the plaintiffs who had chosen the forums and who had filed the suits. They have not chosen to amend the earlier plaints by incorporating the subsequent reliefs. As a matter of fact, the two plaintiffs in C.S.No. 628 of 2019 have divided themselves and had instituted the other two suits independent of each other. I hold the applications are mala fide in nature.

30. The issues in O.S.No. 325 of 2017 are totally unconnected with the issues in C.S.No. 628 of 2019. The causes of action are totally different. The parties are different. The documents relied are different. The only common aspect is about the constitution of the trust in the year



1963 and even that is not shown as a cause of action in C.S.No. 334 of 2013 (O.S.No. 5150 of 2020).

31. In O.S.No. 325 of 2017, issues have been framed and trial has to be commence.

32. It is thus seen that a common pattern has emerged. The plaintiffs Bharat Kumar K.Shah and Rajesh R.Desai, having instituted the suits do not want to graze the witness box and tender evidence. The first plaintiff Bharat Kumar K.Shah had an experience of tendering evidence in C.S.No. 334 of 2013 (O.S.No. 5150 of 2020) and had been cross examined. It is claimed by Mr.S.Vijayaraghavan, the learned Counsel for the defendant in C.S.No. 334 of 2013 (O.S.No. 5150 of 2020) that the admissions made by him during cross examination are damaging to such an extent that the defendants have taken a decision that there is no necessity to let in oral evidence. Thus, it is understandable that the plaintiffs seek to avoid facing that situation again and therefore, it is clear that these applications have been filed without any bona fide reason.

33. In view of these reasons, A.Nos. 1247 & 1248 of 2022



seeking to withdraw O.S.No. 325 of 2017 from the City Civil Court to this Court is also dismissed with costs.

34. There is no agreement by the parties to transfer the two suits (O.S.No. 5150 of 2020 and O.S.No. 325 of 2017) to the file of this Court. It will be a mockery of justice if request for such transfer is granted.

35. In the result:-

(i) A.No. 1245 of 2022 is dismissed with cost of Rs.10,000/- payable by each one of the two plaintiffs in C.S.No. 628 of 2019 to each of the defendants in O.S.No. 5150 of 2020 (VI Additional City Civil Court, Chennai). Costs to be paid directly to the defendants;

(ii) A.No. 1246 of 2022 is dismissed and a direction is given to the VI Additional City Civil Court, Chennai, to dispose of O.S.No. 5150 of 2020 on or before 30.11.2022 by hearing arguments on a day today basis. The learned Judge, VI Additional City Civil Court, Chennai, may keep in mind that evidence had been adduced and there can be no excuse



not to dispose the suit;

C.V.KARTHIKEYAN, J.

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(iii) A.No. 1247 of 2022 is dismissed by directing the two plaintiffs in C.S.No. 628 of 2019 to pay costs of R.10,000/- each to each one of the defendants in O.S.No. 325 of 2017 (V Assistant City Civil Court, Chennai). Costs to be paid directly to the defendants; and

(iv) A.No. 1248 of 2022 is dismissed and a direction is given to the V Assistant City Civil Court, Chennai to ensure that trial commences in O.S.No. 325 of 2017 after listing the matter in the Special List for the month of December 2022. There must be endeavour to complete the trial and deliver Judgment on or before 31.03.2023.

04.11.2022

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Internet:Yes/No

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**Pre-Delivery Orders made in
A.Nos. 1245 to 1248 of 2022
And**



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