

A.No.1984 of 2022inC.S.No.199 of 2020**C.V.KARTHIKEYAN, J.**

This Application has been filed consequent to an Application which had already been allowed namely, A.No.2596 of 2021, by an order dated 22.03.2022, by my learned predecessor. That particular Application had been filed by the plaintiffs to implead defendants 21 to 36 as proposed defendants.

2.The entire issue surrounds the elections to the 1st defendant / the Research Foundation for Jainology. The plaintiffs have their grievance over the election of the defendants 2 to 19 and the suit has been filed for a declaration that the Annual General Body Meeting held on 20.10.2019 and the election of the defendants 2 and 7 to 20 as Executive Committee Members as illegal, null and void and a further declaration that the resolution dated 27.02.2020 of the 2nd defendant on behalf of the 3rd defendant is illegal, null and void and also that a similar resolution dated 04.03.2020 is null and void and that further resolution dated 09.03.2020 of the 2nd defendant are null and void and for permanent injunction restraining the defendants 2, 7 to 20 from continuing as Executive



Committee Members or to interfere with the plaintiffs continuing to function as Members of the of the 4th defendant School Committee and restraining the 5th defendant from in any manner acting in the affairs of the 3rd defendant based on the Resolution dated 27.02.2020.

3.It is unfortunate, that those who are incharge of education, had thought it a worthwhile exercise to enter into an adversarial litigation in a Court of law. They must realize that they should set an example of peace. Rather they have filed a suit and have contested every averments made in every Application with one leveling allegation against the other and for good measure the other leveling counter allegations.

4.Be that as it may, it is not for this Court to examine that particular aspect. I really hope that Members of the School Committee will have some prudence to realize that they should in the first place exhibit peace among themselves, before preaching and teach moral values to the students.

5.Subsequent, to the election of the 2nd to 19th defendants and pending the suit, a further election was conducted and by that, not only



were the 2nd to 19th defendants were retained as members but further the 25th to 31th defendants were elected to various posts. This has necessitated the filing of the aforementioned Application in A.No.2596 of 2021 to implead them as defendants 21 to 35.

6.A learned Single Judge of this Court, had passed the following order:

“This application has been filed the by the plaintiffs to implead the proposed parties as defendants 21 to 36 in the above suit.

2.Heard both sides and perused the records.

3.This application has been opposed by the defendants that the applicants/plaintiffs bringing new cause of action by impleading the proposed parties and hence this application has to be dismissed.

4.It is seen that the proposed parties are subsequently elected office bearers of the first defendant society and if they are impleaded in the above suit as defendants, no prejudice would be caused to the defendants.

5.For the foregoing reasons and being satisfied with the



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averments made in the affidavit, this application is allowed.

6.Learned counsel for the applicants/plaintiffs is directed to file amended copy of the plaint.”

7.The said order was passed after hearing both sides. Consequent to that order being passed, the plaint had been amended including the said 21 to 35 individuals as defendants to the suit. After having so impleaded them as parties, now the present Application has been filed seeking to incorporate further paragraphs in the plaint raising allegations as against the election of the said defendants 21 to 35.

8.It is the contention of the learned counsel for the plaintiffs that the relief sought is consequential in nature and consequent to the said defendants to be impleaded as parties and it is only appropriate that the plaintiffs are also permitted to amend the plaint suitably, giving reasons as to how and in what manner their elections are being questioned.

9.The learned counsel for the respondents, particularly defendants, 1, 2 and 13 have raised serious objections. It is claimed that there is a



shift in the cause of action and therefore, the amendments now sought cannot be incorporated in the plaint.

10. It is stated that the plaintiffs had come to Court with a specific grievance raised against the elections conducted on 20.10.2019 whereby, the 2nd to 19th defendants were elected to various posts of the 1st defendant. On a subsequent date, further elections were conducted since there was no injunction order from the Court and after following due procedure namely, issuing three weeks notice to the plaintiffs. Elections were conducted and the defendants who had been impleaded as defendants 21 to 35 have been elected to various posts of the 1st defendant. It is also stated that since the cause of action has shifted questioning the elections of the defendants 21 to 35, the relief as originally sought has now become infructuous. It is therefore contended that this Application should be dismissed.

11. With respect to this particular contention, the learned counsel for the respondents placed reliance on a judgment of the Hon'ble Supreme Court reported in **(2022) 8 SCC 145, Asian Hotels (North) Limited Vs. Alok Kumar Lodha and others**. The Hon'ble Supreme



Court was concerned with an amendment of a suit filed by the licensees who were shopkeepers challenging revocation of their shop license to include the relief challenging mortgage. The fact was there was a license by which various shopkeepers had taken the shops on license. They were running it. Those licenses were sought to be revoked by the licensor. Questioning such revocation, the shopkeepers filed the suit. Holding that the revocation was correct, the original licensor also filed the suit. Thereafter, an amendment was brought to question, mortgages created.

12. Under those circumstances, the Hon'ble Supreme Court had very clearly held that there were two separate issues namely, one on license / revocation of license and the other on mortgage, which was an agreement between the mortgagor on the one hand and the mortgagee on the other hand. The mortgagees were neither licensor nor licensee. They were third parties. It was under those circumstances, holding that the two different causes of action cannot be merged in one single suit, the Hon'ble Supreme Court had held that the amendment was not proper and observed as follows:



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“36. The High Court while allowing the amendment application in exercise of powers under Order 6 Rule 17 of the Code of Civil Procedure has not properly appreciated the fact and/or considered the fact that as such, by granting such an amendment and permitting the plaintiffs to amend the plaints incorporating the prayer clause to declare the respective charges/mortgages void ab initio, the nature of the suits will be changed. As per the settled proposition of law, if, by permitting the plaintiffs to amend the plaint including a prayer clause nature of the suit is likely to be changed, in that case, the Court would not be justified in allowing the amendment. It would also result in misjoinder of causes of action.”

13. However, with respect to amendment of a plaint, reference with much advantage can also be made to ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others***, reported in ***(2009) 4 SCC (Civ) 37***, wherein the Hon'ble Supreme Court had examined the scope of amendment of a suit and had given the grounds



on which amendment can be allowed and amendment can be rejected.

The Hon'ble Supreme Court had held that bonafide amendments can be permitted and amendments which are malafide should be rejected. It had been very specifically held by the Hon'ble Supreme Court, that the merits of the amendment should not be examined by the Court and the bonafide alone should be examined. It was held as follows:

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;



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(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

14. In the instant case, the learned counsel for the respondents had not protested A.No.2596 of 2021 being allowed. That application had been allowed by an order dated 22.03.2022. There is no appeal filed against the said order. The said order had become final. The defendants have now been impleaded. They are parties to the suit. Now, naturally necessary pleadings will have to be incorporated as against the said defendants. It is for them to contest such pleadings by way of filing written statement. That stage has not yet come. Only pleadings are sought to be filed by the plaintiffs. Opportunity will certainly be granted to file written statement / additional written statement. The only question is to be examined is whether the amendment sought is bonafide or not in the instant case.



15.It is contended that the 2nd to 19th defendants had been elected as office bearers and thereafter, a further set of office bearers have been elected. The relief sought by the plaintiffs with respect to the elections conducted for the 1st defendant will have to be examined as an issue and when that is examined certainly, the 2nd to 19th defendants would put up a defense that there are other defendants who had been lawfully elected and who had not been impleaded as parties.

16.Taking that particular view, my learned predecessor allowed A.No.2596 of 2021.

17.It is contended that there is a shift in cause of action. I hold it is a continuation of the existing cause of action. A cause of action is not one single fact, but a bundle of facts and it must be examined whether they are disjointed or one common set of facts with a common link between the two sets of causes of action.

18.Here the common link is the elections already conducted and the elections conducted pending the suit.



19.I would permit this amendment to be allowed, particularly, because A.No.2596 of 2021 had been allowed on 22.03.2022 and the said order had not been questioned or challenged by filing any Appeal. Having accepted to that order, the respondents will now certainly have to accept this particular amendment, being brought into the plaint.

20.With the above reasonings, this Application is allowed.

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