

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	30.03.2022
DELIVERED ON	22.04.2022

CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI**
CRP. (MD) Nos.1110 & 1111 of 2019**and****C.M.P. (MD) Nos.6065 of 2019 & 1223 of 2020**

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1.A.S.Ansar

MAJILIS UL ULAMA represented by

A.S.Ansar alleged to be a

General Secretary for the Triennium 2015-2018.

2.A.S.Khajamian Akthar

3.A.S.Ameen

4.A.Sheik Mohammed Suhail

5.G.S.Habibullah

6.M.Mohammed Kamaludeen

7.N.Abdul Samad

8.M.Mohammed Zubair

9.M.Akthab Mohideen ...Petitioners/R-2, 3-7, 30, 31, 32/Defendants
in both CRPs.

Vs.

1.G.S.Gulam Mohideen

2.B.M.Abdul Hakkim

for themselves and behalf of the

members of the "MAJLIS UL ULAMA"

a registered society.

...R-1 & 2/Petitioners 1 & 2/
Plaintiffs 1 & 2

3.A.Niaz Ahamed

MAJLIS UL ULAMA

represented by A.Niaz Ahamed

alleged to be a General Secretary

for the Triennium 2015-2018.

4.A.K.Khaja Ziaudeen

5.A.K.Khaja Nazumudeen

6.M.S.Mohammed Syfudeen

7.M.S.Mohammed Nymudeen

8.A.Sheik Mohideen

9.M.S.Sahabudeen

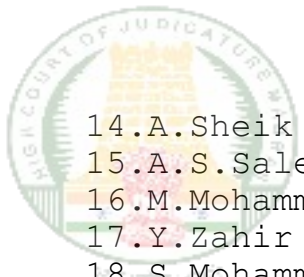
K.A.Kaleel Ahamed (died)

10.K.Abdul Samad

11.P.Abdul Muthalif

12.M.Kaleelur Rahman

13.A.M.Abdul Salam



14.A.Sheik Mohammed Shuhib
15.A.S.Saleem
16.M.Mohammed Aslam
17.Y.Zahir Hussain
18.S.Mohammed Danish
19.A.R.Mohammed Ismail
20.A.M.Mohammed Ashik
21.B.A.Bahaudeen
22.A.B.Kaiser
23.A.K.Abdul Kareem
24.A.K.Mohammed Hafeel
25.M.Umar Farooq
26.GSH.Harish
27.M.N.P.Ziaudeen
28.NJJ.Noordeen
29.S.Khaleel Rahuman
30.Dr.I.Mohammed Bilal
31.M.S.Ibrahim Kalliullah
32.V.S.M.Varis Mohideen
33.K.S.Abdul Azeez ...R-3 to 33/R-1, 8-29, 33/D-1, 8-29, 33,
in both CRPs.

PRAYER in C.R.P(MD)No.1110 of 2019: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.03.2019 made in I.A.No.1 of 2019 in O.S.No.600 of 2018 before the learned I Additional Subordinate Judge, Tiruchirappalli and allow the Civil Revision Petition.

PRAYER in C.R.P(MD)No.1111 of 2019: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.03.2019 made in I.A.No.2 of 2019 in I.A.No.449 of 2018 in O.S.No.600 of 2018 before the learned I Additional Subordinate Judge, Tiruchirappalli and allow the Civil Revision Petition.

In C.R.P(MD)No.1110 of 2019

For Petitioners	:Mr.M.Vallinayagam, Senior Advocate for Mr.P.Arun Jayatram
For R-1 & 2	:Mr.Shangar Murali
For R-5,6,8,10 to 14, 16, 18 & 20	:Mr.P.Athimoola Pandian
For R-3,21 to 23 & 32	:Mr.C.Susi Kumar
For R-7	:Mr.Vinod Sathya Lazar

In C.R.P(MD)No.1111 of 2019

For Petitioners	:Mr.M.Vallinayagam, Senior Advocate for Mr.P.Arun Jayatram
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For R-1 & 2

:Mr.Shangar Murali

For R-5, 6, 8, 10 to 14,
16, 18, & 20

:Mr.P.Athimoola Pandian

For R-21 & 22

:Mr.C.Susi Kumar

For R-7

:Mr.Vinod Sathya Lazar

COMMON ORDER

C.R.P(MD)No.1110 of 2019 has been filed to set aside the fair and decreetal order, dated 18.03.2019 in I.A.No.1 of 2019 in O.S.No.600 of 2018 passed by the learned I Additional Subordinate Judge, Tiruchirappalli.

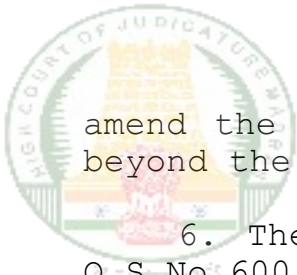
C.R.P(MD)No.1111 of 2019 has been filed to set aside the fair and decreetal order, dated 18.03.2019 in I.A.No.2 of 2019 in I.A.No.449 of 2018 in O.S.No.600 of 2018 passed by the learned I Additional Subordinate Judge, Tiruchirappalli.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The petition in I.A.No.1 of 2019 in O.S.No.600 of 2018 was filed by the plaintiffs under Order 6 Rule 17 of Civil Procedure Code to amend the plaint.

4.Heard on either side. Perused the material documents available on record.

5.These Civil Revision Petitions are filed on the ground that the Court below has failed to consider that the entire plaint, the plaintiffs have made averment on the basis of the relief claimed in the suit in O.S.No.600 of 2018. But, the relief claimed in the suit itself is infructuous in view of the subsequent events. The Court below ought not to have allowed the application for amendment, when the petitioners herein have pleaded that the prayer of the suit become infructuous on the ground that the petitioners were elected for Triennium 2018-2021 in pursuant to the election conducted by the society. The Court below ought to have considered that the defendant Nos.1, 26, 40 & 41 have filed their written statement on 12.11.2018 and in the written statement they have not pleaded with regard to the election conducted for the Trineenium 2018-2021 on 26.08.2018 and produced or marked any documents before the Court in the interlocutory Applications, without pleading and without any documents, the Court below has rendered such findings. The Court below has no power to order to amend the plaint filed by the respondents, in the absence of any amendment sought for in the plaint which leads to inconsistency between the plaint prayer and to



amend the I.A.No.449 of 2018 filed by the respondents and it goes beyond the scope of the suit.

6. The petition in I.A.No.2 of 2019 in I.A.No.449 of 2018 in O.S.No.600 of 2018 was filed by the plaintiffs under Order 6 Rule 17 read with Section 151 of Civil Procedure Code to amend the affidavit, petition and prayer in I.A.No.449 of 2018 in O.S.No.600 of 2018.

"6.Originally, the plaintiffs have filed a suit in O.S.No. 600 of 2018 to grant a mandatory injunction to admit all the affairs of the society by appointing a receiver to take charge of the administration of the schools and institutions including the VSMI Marriage hall run by the MAJILS UL ULAMA society as described in description of the property to collect all incomes, fees and credit the same into the bank accounts to be newly opened and withdraw the same if need to be met out the expenses of the institutions and to manage the affairs of the MAJILS UL ULAMA society in all aspects till new officer bearers for the MAJILS UL ULAMA society is elected for the triennium 2018-2021 as per the provision of Tamil Nadu Society Registration Act, 1975 with the list of Members as per form VI lastly taken on file by the District Registrar of Society, Tiruchirappalli on 30.12.2009 by secret ballot etc.,

(ii). to grant a decree of permanent injunction in mandatory form by fix up date for Convene the General Body Meeting in the Month of September 2018 as contemplated in the Bylaw of the MAJILIS UL ULAMA registered society in order to elect the office bearers under the supervision of retired judicial Officers or Advocate commissioner for the triennium 2018-2021 as per the provision of Tamil Nadu Society Registration Act, 1975 with the list of Members as per form VI lastly taken on file by the District Registrar of Society, Tiruchirappalli on 30.12.2009 by secret, etc."

7.Now the plaintiffs want to amend the plaint regarding value, relief and subsequent happenings, which will totally change the character of the suit.

8.Further the plaintiffs have not amend the cause of action.

9.The second prayer in the original plaint is regarding General Body meeting which was held in the month of September 2018. It has become infructuous.



10. Further, the petition in I.A.No.2 of 2019 filed under Order 7 Rule 11 of Civil Procedure Code by the revision petitioners which is also pending in I.A.No.949 of 2018. Without deciding the matter the Court cannot decide the subsequent petition for amendment.

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11. The Judgment reported in **Civil Appeal No.5540 of 2016 (Arising out of SL.P.(C)No.15474 of 2010** in the case of **R.K.Roja Vs. U.S.Rayudu and Another**, in which the Hon'ble Supreme Court held as follows:

.....

"The procedure adopted by the court is not warranted under law. Without disposing of an application under Order VII Rule 11 of the CPC, the court cannot proceed with the trial."

12. Likewise, the first prayer is for appointment of receiver. Without main prayer, the plaintiffs cannot ask for appointment of receiver. The appointment also till new office bearers elected for the Triennium 2018-2021. But, the election has been conducted for 2018-2021 and 2021 to 2024. So, the prayer also become infructuous.

13. Both the reliefs sought for in the suit are become infructuous. Now to give life to the suit the plaintiffs wanted to amend the prayers without amending cause of action.

14. If at all any grievances regarding elections for the subsequent period the plaintiffs may file fresh suit.

15. But, the trial Court without going into the error in the amendment petition allowed the petitions. It is not proper. So, this Court has to interfere with the findings of the Court below.

16. Finally, both Civil Revision Petitions are allowed by setting aside the order, dated 18.03.2019 in I.A.No.1 of 2019 in O.S.No.600 of 2018 and in I.A.No.1 of 2019 in I.A.No.449 of 2018 in O.S.No.600 of 2018 passed by the learned I Additional Subordinate Judge, Tiruchirappalli. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

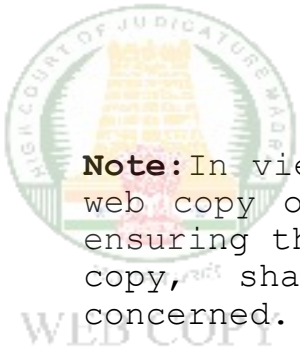
Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The I Additional Subordinate Judge,
Tiruchirappalli.

+1 CC to M/s.K.S. SANKAR MURLI, Advocate (SR-20364[F] dated 22/04/2022)

+1 CC to M/s.P. ARUN JAYATRAM, Advocate (SR-20566[F] dated 22/04/2022)

**Common Order made in
C.R.P. (MD) Nos.1110 & 1111 of 2019
22.04.2022**

ck(CO)
TR(05.05.2022) 6P 4C