



WEB COPY



C.R.P (MD) No. 646 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

C.R.P(MD)No.646 of 2017
and
C.M.P(MD)No.2917 of 2017

Radhakrishnan
President
Paramakudi Vaniya Uravin
Muraiyalarkalin Pothusabai,
Door No.8/191, Kannaki Street,
Paramakudi Town,
Ramanathapuram District.

... Petitioner

Vs

V.Sundaramoorthy

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the civil revision petition to set aside the fair and decreetal order dated 30.01.2017 made in I.A.No.790 of 2013 in O.S.No.150 of 2011 on the file of the District Munsif Court, Paramakudi and dismiss the said application.

For Petitioner : Mr.A.Arumugam

For Respondent : Mr.S.Sivathilagar



C.R.P (MD) No. 646 of 2017

WEB COPY

ORDER

This civil revision petition is filed as against the order of the learned District Munsif, Paramakudi in I.A.No.790 of 2013 in O.S.No.150 of 2011, dated 30.01.2017.

2.The respondent / plaintiff has filed the above suit in O.S.No.150 of 2011 for the following reliefs:

“a.To declare the validity of the enquiry that is conducted under Section 36 of the Tamil Nadu Societies Registration Act, by the third defendant in Lr.No.5063/A2/2009, dated 16.09.2010 and 30.08.2010 is sustainable under law.

b.To declare that the order passed against the provision of the Act and Rules made thereunder in Lr.no.23783/I1/201T dated by the second defendant is null and void.

c.To direct the first defendant who has the sovereign power under this Act to pass order for the amalgamation of the Paramakudy Vaniyar Uravin Muraiyarkalin Pothu Sabai into the Paramakudy Vaniyar Sangam (S.No.62/2008) that entrusted with the powers to make Rules



C.R.P (MD) No. 646 of 2017

regarding the amalgamation of societies under this Tamil Nadu Societies Registration Act.

(d) To direct the 1st defendant to take action against the 2nd and 3rd defendants for the reneged of their duty in accordance with the issues by the personal and administrative department in the Memo Lr.No.19500/Aiyvu1/2010-11, personal and administrative reforms department/Aiyvu1 dated 03.05.2010 and the same in Lr.No. 27084/Aiyvu-1, 2020-1 personal and administrative reforms Department/Aiyvu-1, dated 21.06.2010 collectively.

(e) To direct the 2nd defendant to give previous sanction in writing for the institution of criminal proceedings according to the representation dated 16.09.2010 by the III defendant as well as the representation dated 30.08.2010 in which the enquiry had been conducted by the DIG of registration at Madurai regarding the reports.

(f) To grant permanent injunction by restraining the 1 to 3 defendants not to entertain any further proceedings against Paramakudy Vaniyar Uravin Muraiyarkalin Pothu Sabai's request in the entertainments of the affairs of the society by any means afterward.

(g) Awarding the costs of the suit.”



C.R.P (MD) No. 646 of 2017

WEB COPY

3.The petitioner /defendant has filed the interlocutory application in I.A.No.790 of 2013 under Order VII Rule 11 CPC to strike off the plaint that the plaint is not maintainable under law. The respondent, who is not a member of the petitioner's Society has filed the suit claiming to be the President of the Society. The said application was dismissed by the trial Court. Aggrieved over the same, the present civil revision petition is filed.

4.The learned Counsel for the petitioner submitted that the plaintiff is not a member of the petitioner's Society, but he has filed the suit claiming himself as the President, only in order to defame the Society. The petitioner's Society and the respondent's Society are separate legal entities and the respondent is not having any legal right or *locus standi* to file the present suit, in respect of affairs of the petitioner's Society. The respondent's Society was formed in the year 2008 and it cannot question any order passed in respect of the affairs of the petitioner's Society.

5.The learned Counsel further submitted that one Society cannot intermeddle in the affairs of the another Society. As against the order passed



C.R.P (MD) No. 646 of 2017

under Section 36 of the Tamil Nadu Societies Registration Act, an appeal remedy is available under Section 45 of the said Act and therefore, the suit is not maintainable. The amalgamation of two Societies cannot be forced on the unwilling Society by other Society either directly or at the interaction of the authority under the Act.

6.The learned Counsel further submitted that if the statutory authority failed to do their duty, there is an appeal remedy available. If the plaintiff fails in the appeal, he has to approach this Court either under Article 226 or under Article 227 of the Constitution of India. The sanction for the alleged criminal prosecution cannot be granted by the civil Court and as such prayer (e) is baseless and mischievous and prayer (f) is also not maintainable on the face of it. There is no cause of action for the plaintiff / respondent for filing the suit and moreover, the suit is filed only to harass the defendants.

7.The learned Counsel for the respondent / plaintiff submitted that the suit is of the year 2011. This application under Order VII Rule 11 is filed only in the year 2017. The suit is also ripe for trial. The grounds raised by the petitioner cannot be raised at this stage of the suit.



C.R.P (MD) No. 646 of 2017

WEB COPY

8. Heard the learned Counsel on either side and perused the materials placed on record.

9. The petitioner is the 4th defendant in the suit. The respondent / plaintiff has filed the suit in O.S.No.150 of 2011 before the District Munsif Court, Paramakudi for the reliefs stated supra. Pending the suit, the petitioner filed an application in I.A.No.790 of 2013 under Order 7 Rule 11(a) CPC for rejection of plaint on the ground that the plaintiff does not have any cause of action to file a suit as against the petitioner. However the trial court rejected the same on the ground that cause of action is a bundle of facts and it can be determined only during the trial.

10. The respondent / plaintiff was initially a member of the petitioner Society, which was registered in the year 1973. Due to the misconduct of the respondent, he was removed from the petitioner Society with effect from 05.07.2003. After his removal, the respondent has registered a new Society in the year 2008. Therefore, it is not in dispute that the respondent is not a member of the petitioner Society and that he is a third person to the Society.



WEB COPY

11. It is relevant to extract Order 7 Rule 11 CPC as under:-

“Rejection of plaint.-The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails comply with the provision of Rule 9.*

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and



that refusal to extend such time would cause grave injustice to the plaintiff.”

WEB COPY

12.As per Order 7 Rule 11(a) CPC, a plaint has to be rejected if it does not disclose any cause of action.

13.*In Re The Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust [(2012) 8 SCC 706]*, the Hon'ble Apex Court, while dealing with the issue involving cause of action has observed as follows:-

“13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

14. *In A.B.C. Laminart (P) Ltd. v. A.P. Agencies [(1989) 2 SCC 163]*, this Court explained the meaning of “cause of action” as



follows:

WEB COPY

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

15. It is useful to refer the judgment in Bloom Dekor Ltd. v. Subhash Himatlal Desai [(1994) 6 SCC 322] , wherein a three-Judge Bench of this Court held as under:

“28. By ‘cause of action’ it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court, in other



C.R.P (MD) No. 646 of 2017

words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.”

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.”

14. Thus, cause of action is a bundle of facts which, taken with the law applicable to them, gives the plaintiff the right to relief against the defendant and it must include some act done by the defendant, since in the absence of such an act, no cause of action can possibly accrue. It is not in dispute that the respondent was removed from the petitioner Society in the year 2013 and from that moment, he ceased to be a member of the Society. As against the removal, he ought to have approached the concerned authority. However he filed a suit with the intention of amalgamating the Societies.

15. Section 30 of the Tamil Nadu Societies Registration Act, 1975, provides the procedure for amalgamation and the same is extracted as under:-

“30. Amalgamation and division of registered societies:

(1) Any two or more registered societies may with the prior approval of the Registrar, by special resolution of both or all such



C.R.P (MD) No. 646 of 2017

registered societies, become amalgamated together as one society, with or without any dis- solution or division of the funds of those registered societies or any of them.

...”

16.It is crystal clear from the provision that in order to get amalgamation of two registered Societies, a special resolution has to be passed by both registered Societies. In the absence of any such resolution, no amalgamation can be done and one registered Society cannot ask for amalgamation with another registered Society as a matter of right, since a registered Society is a separate legal entity.

17.The main contention of the respondent is that the suit was filed in the year 2011, whereas, the petitioner filed the application for rejection of plaint only in the year 2017 and therefore, it is hit by limitation.

18.*In Re R.K.Roja v. U.S.Rayudu and Others [AIR 2016 SC 3282]*, the Hon'ble Apex Court, while dealing with the issue regarding limitation for filing a petition under Order VII Rule 11 CPC, has observed as follows:-



WEB COPY

“4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11 CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable v. Charity Commr. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] : (SCC p. 146, para 10)

“10. ... The trial court can exercise the power at any stage of the suit – before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.”

The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rules 11(a) to (f) CPC, the same has to be rejected.

5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement thereafter (see Saleem Bhai v. State of



Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable case [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] : (SCC pp. 148-49)

“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.””

19. Thus, it is well settled that application under Order VII Rule 11 of the Civil Procedure Code can be filed at any stage of the proceedings and as such, the contention of the respondent that it is hit by limitation cannot be accepted.



C.R.P (MD) No. 646 of 2017

WEB COPY

20. When the respondent is removed from the petitioner's society, he ought to have opted for the remedy available under the Act and as per the by-laws of the Society. However, the respondent formed a new Society and the present suit is filed with an intention to amalgamate the petitioner's Society with the respondent's Society. Since the respondent is not a member of the petitioner's Society, he cannot question the affairs of the Society and the same has been vested with the concerned authorities specified under the Tamil Nadu Societies Registration Act, 1975. There is no provision in the Tamil Nadu Societies Registration Act, 1975, which enables the respondent to get the relief as he prayed for in the suit. He does not have any cause of action as against the petitioner / defendant and therefore, this Court is inclined to interfere with the orders of the trial Court.

21. Accordingly, this revision petition stands allowed and the order passed by the learned District Munsif, Paramakudi, in I.A.No.790 of 2013 in O.S.No.150 of 2011, dated 30.01.2017, is hereby quashed. The petition in I.A.No.790 of 2013 is allowed and as a consequence, the suit in O.S.No.150 of 2011 on the file of the District Munsif Court, Paramakudi, is hereby struck off. There shall



C.R.P (MD) No. 646 of 2017

be no order as to costs. Consequently, connected miscellaneous petition is closed.

17.08.2022

dsk/gk

To

The District Munsif,
Paramakudi.



WEB COPY



C.R.P (MD) No. 646 of 2017

B.PUGALENDHI, J.

gk

C.R.P(MD)No.646 of 2017

17.08.2022