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C.R.P. No.191 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 22.08.2023

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**THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI**

C.R.P.No. 191 of 2017  
and  
C.M.P. No. 800 of 2017

Indian Red Cross Society,  
Tamil Nadu Branch,  
New No.32 (Old No.50),  
Montieth Road, Egmore,  
Chennai-600 008.

... Petitioner

Versus

1. K.S.Sankara Prasath,  
S/o. K.B.Sundaresan
2. R.Srinivasan,  
S/o. S.Ramasamy
3. Indian Red Cross Society,  
Salem District Branch,  
having its office  
The Deputy Director of Health Services,  
Near Collectorate, Salem-636 001.

.. Respondents

**PRAYER** : Civil Revision Petition is filed under Sec.115 of Civil Procedure Code, praying to set aside the order and decretal order of the



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learned III Addl. District Judge, Salem dated 02.09.2016 dismissing

I.A.No.219 of 2014 in O.S.No.101 of 2011.

For Petitioner : Mr.M.Narayanaswamy

For Respondents : Mr.A.V.Arun  
assisted by Mr.M.A.Aruneshe  
for R1 to R2

Mr.B.Tamilnidhi,  
Addl. Govt. Pleader for R3

### **ORDER**

The Revision Petitioner herein is the 1<sup>st</sup> defendant in the suit in O.S.No. 101 of 2011 on the file of learned III Addl. District Judge, Salem and they had filed an application in I.A.No.219 of 2014 before the court below to reject the plaint under Order 7 Rule 11 of C.P.C. The said application was strongly objected by the plaintiffs 1 and 2 by filing counter objections. On hearing both sides, the trial judge dismissed the application. Challenging the same, the present Civil Revision Petition has been filed.

2. The learned counsel for Revision Petitioner argues that the suit itself is not maintainable, as the plaintiffs 1 and 2 have not obtained leave of the court to institute a suit, as such is not maintainable under Sec.91 of



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C.P.C., besides, the plaintiffs 1 and 2 have no locus standi to file a suit, since they have not submitted any materials to show that they are the members of the Revision Petitioner society. Apart from that, there is no territorial jurisdiction in respect of relief (a) and (b), since because the cause of action relating to Tamil Nadu Branch, which is located in the city of Chennai. Furthermore, the suit itself is barred for non-joinder of necessary parties and for all these reasons, the plaint ought to have been rejected, but the trial judge erroneously dismissed the application filed by the Revision Petitioner, as such is unfair and the same is liable to be set aside.

3. The learned counsel for respondents/plaintiffs 1 and 2 would submit that the alleged formation of Managing Committee without following the uniform rules and the activities of Managing Committee caused damages to the public at large to the Salem District and the plaintiffs 1 and 2 also have suffered with wrongful act of the said Committee because they have been denied by the defendants to cause their franchise in the election of District Committee. So, they have approached the court for the relief of declaration and other consequential reliefs. Before filing the suit,



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they have issued notice in the month of January 2011 and thereafter, a letter was issued by the 1<sup>st</sup> defendant to nominate the members for the managing committee inspite of knowing the fact where no election has been conducted. Thus, the cause of action was arose to file a suit and they have valid defence to prove their claim, which was rightly appreciated by the trial judge. Hence, they prayed to dismiss the Civil Revision Petition as no merits.

4. Considering both side submissions and on perusal of records, it reveals that the Revision Petitioner had filed an application in I.A.No.219 of 2014 praying to reject the plaint under Order 7 Rule 11 of C.P.C. on the ground of non-joinder of necessary parties, non-disposal of wrongful acts of Managing Committee and not obtained leave of the Court under Sec.91 of Cr.P.C., and the plaintiffs 1 and 2 are not members of Indian Red Cross Society and the election to the Salem District was already conducted. So, the reliefs claimed by them became infructuous, besides Salem Court has no jurisdiction.

5. The plaintiffs 1 and 2 have filed a suit in O.S.No. 101 of 2011 on the file of learned III Addl. District Judge at Salem against the Indian Red



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Cross Society stating that the Managing Committee failed to implement uniform rules to conduct the election at the District level, which was objected by them in the month of January 2011 by issuing notice to the 1<sup>st</sup> defendant, inspite of that, the 1<sup>st</sup> defendant sent a letter to all the Ex-officio Presidents on 29.03.2011, which contains certain expression, which is contrary to fundamental principles of the society and the election has not been conducted in a proper manner, besides the alleged formation of Managing Committee without following uniform rules is contrary to well-established principles of law. Hence, he prayed for declaration and other consequential relief with regard to formation of alleged Managing Committee of Tamil Nadu branch as null and void. After receipt of notice, the 1<sup>st</sup> defendant filed an application to reject the plaint contending that the plaintiffs ought to have obtained leave of the court under Sec.91 of Cr.P.C., but no such leave was granted, on that ground the suit is not maintainable. Further, the learned counsel would submit that the membership has to be approved by the Executive Committee and as they are not members of the society, the plaintiffs 1 and 2 have no locus standi to raise objections and also content that election to the Salem District was already conducted. So,



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there is no cause of action to file a suit. It is a settled proposition that at any stage of the suit, an application under Order VII Rule 11 of C.P.C. can be taken into consideration, provided the reason assigned by the defendants to reject the plaint also looked into. Based upon the averments in the plaint, the main objections raised by the plaintiffs 1 and 2 is that the Managing Committee is acting against the principles laid down by the society. Therefore, he prayed to declare the continued functioning of Managing Committee as null and void and the said issue is to be decided only on the defence adduced on the side of both parties. Furthermore, with regard to filing an application under Sec.91 of C.P.C., the trial judge held that at the time of filing of the case, the plaintiffs submitted an application to grant leave, but it was not brought into knowledge of the court. Thereafter, the said application was taken on file in I.A.No.70 of 2016 along with the suit and the notice was also sent to the defendants, but they have not filed counter statement. So, the said application was allowed. Therefore, the leave of the court was obtained by the plaintiffs. The trial court rejected the plea with regard to non-joinder of necessary party and other issues raised by the defendants as the same are beyond the scope under Order VII Rule 11,



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which needs no interference. Furthermore, while disposing the Writ Petitions in W.PNos.2007, 2031, 2392 & 5729 of 2021, this court also made an observation that there is a Government Order vide G.O.Ms. No.181, dated 09.04.2020 stating that the transfer of complaint is on the allegation of fraudulent activities and actions detrimental to the interest of Indian Red Cross Society, Tamil Nadu Branch and the financial establishment to the CBI for investigation. So, all these facts and circumstances necessitate the plaintiffs 1 and 2 to approach the court, thereby they are entitled to proceed before the court of law. Accordingly, this Civil Revision Petition is dismissed and the findings of the trial judge in I.A.No. 219 of 2014 in O.S.No.101 of 2011 is confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No  
Internet: Yes/No  
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To  
III Addl. District Judge,  
Salem.

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**T.V.THAMILSELVI, J.**

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