

05.03.2024
Item No.23
gd/ssd

CO/3445/2023
PRESBYTER-IN-CHARGE & ANR.
VS
PRITHWISH CHOUDHURY & ANR.

Mr. Rwitendra Banerjee,
Mr. Sougata Mitra,
Mr. Nikhil Kr. Gupta,
Ms. Subhasri chatterjee,
Mr. Subhadeep Maitra
..for the petitioners.

The defendant nos. 1 and 2 in a suit for declaration and permanent injunction has filed this application under Article 227 of the Constitution of India challenging an Order No.19 dated September 21, 2022 passed by the learned Civil Judge (Senior Division), Purulia in Title Suit No.426 of 2020.

By the order impugned the application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure stood rejected.

Mr. Banerjee, learned Advocate appearing in support of the petition submits that the plaint fails to disclose any cause of action for which the same is liable to be rejected.

He further submits that the finding of the learned Trial Judge that the question whether any alleged election has been properly held or not is a pure question of law and facts which cannot be decided without having any evidence is a perverse

finding as the plaintiff/opposite party herein has not challenged the validity of such election.

After perusing the plaint which has been annexed to this application this Court finds that the plaintiff claims to be the Secretary of Pastorate Committee of Ascension Church at Purulia and the defendant no.1 is the President of the Committee and the defendant no.2 is the Assistant Presbyter of such Committee. It is further stated therein that the defendant no.1 requested the plaintiff to call Pastorate Committee meeting for preparation of Annual General Meeting and other matters but in the meeting held on October 18, 2020 the attending members of such Committee agreed and resolved that until and unless the pandemic situation is normalised it shall not be just to hold Annual General Meeting. It was also agreed that every works and functions of the Committee shall be proceeded with as per the spirit of the letter dated 16th May, 2020. It was further stated therein that the plaintiff came to learn that the principal defendant nos.1 and 2 shall form an ad hoc Pastorate Committee who shall take all charges from the plaintiff.

On the basis of such factual assertion, the opposite party filed the suit praying for declaration that the plaintiff has got every right to hold Office of the Secretary of Pastorate Committee of Ascension

Church, Purulia and the principal defendants have got no right to form Pastorate Committee without Pastorate Election and for a decree of permanent injunction restraining the principal defendants from interfering with the right of the plaintiff from holding the Office of the Secretary of the Committee.

Upon a bare reading of the said plaint it appears to this Court that there has been a disclosure of cause of action.

In so far as the contention of Mr. Banerjee that the observation of the learned Trial Judge with regard to the validity of the election, this Court finds that such observation was made in the light of the specific stand taken by the petitioners in the application under Order VII Rule 11 wherein the defendants have asserted that they have been duly elected and recognized by the Diocesan Council. Such observation, in the considered view of this Court, is only to clarify that the factual dispute with regard to holding of election which has raised by the defendants in the application under Order VII Rule 11 cannot be decided without a trial on evidence.

The learned Trial Judge has assigned cogent reasons for rejecting the application under Order VII Rule 11 of the Code.

This Court is, therefore, not inclined to interfere with the order impugned.

CO 3445 of 2023, accordingly, stands dismissed.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities

(HIRANMAY BHATTACHARYYA, J.)