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O.S.A. No.37 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

O.S.A.No.37 of 2024
and
C.M.P.No.4948 of 2024

1.A.Arul Mozhi Shivam

2.N.G.Hari Krishnan

... Appellants

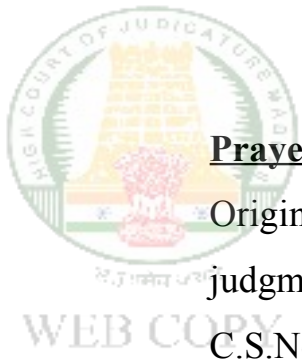
Vs.

1.Socio Economic Service Society,
Represented by its Secretary,
“Variar Illam” No.:24, Saraswathi Street,
Mahalingapuram, Nungambakkam,
Chennai – 600 034.

2.The President,
Socio Economic Service Society,
Represented by its Secretary,
“Variar Illam” No.:24, Saraswathi Street,
Mahalingapuram, Nungambakkam,
Chennai – 600 034.

3.R.Ramakrishnan, President,
Socio Economic Service Society,
Represented by its Secretary,
“Variar Illam” No.:24, Saraswathi Street,
Mahalingapuram, Nungambakkam,
Chennai – 600 034.

... Respondents



Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules and Clause 15 of Letters Patent, to set aside the interim judgment and decree dated 03.01.2024 passed in A.No.1690 of 2023 in C.S.No.79 of 2022.

For Appellants : Mr.A.Muthu Subramaniam
for Mr.S.Namasivayam

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

Challenge in this appeal is to the order of the learned Single Judge dismissing the application seeking an amendment of the prayer alone.

2. The appellants have filed a suit for declaration that the resolution passed by the Executive Committee of the first respondent society on 29.01.2022 deciding to demolish the existing building and to reconstruct the building is illegal, null and void and ultra vires the objects and bye-laws of the 1st defendant Society and for a permanent injunction restraining the defendants, their men, agents, employees or any one claiming under them from demolishing the building on the suit schedule property until it is declared that the building lacks stability by the competent authorities.



3. Pending suit the appellants moved an application in A.No.1690 of 2023 seeking amendment of the plaint to include the prayer which reads as follows:-

“A declaration that the General Body of the society is the ultimate authority in all matters relating to the society, as empowered under Clause 10 of the Bye-law.”

4. The learned single Judge who dealt with the amendment application found that the prayer itself is superfluous and it is not required at all. The learned Judge further found that the suit being one challenging the resolution of the Executive Committee, if it is shown that the decision with regard to demolition and re-construction of building can be taken only by the General Body and not by the Executive Committee, the plaintiffs will necessarily succeed. Therefore, the declaration that the General Body is a supreme Authority is not necessary. Hence, this appeal.

5. The learned counsel for the appellants would submit that a declaration to the effect that the General Body is supreme would establish the hierarchy of the Society.



6. We do not think we could accept the said argument. If the bye-laws provide that it is the General Body which is supreme and the decisions of the Executive Committee are subject to the decisions of the General Body, the same can be established by evidence, for which a prayer is not required.

7. We are unable to fault the learned Single Judge for dismissing the application on the ground that the amendment itself is unnecessary. The appeal therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
04.03.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



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and
R.SAKTHIVEL, J.

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