



S.A.No.293 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 13.03.2024

Pronounced on: 22.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.293 of 2018
& C.M.P.No.8077 of 2018

P.Muthuswamy

... 1st defendant/Respondent/Appellant

/versus/

1. K.Poogi Palaniappan.
2. M.Arumugam.
3. R.Kathirvel.
4. P.Vadivel.
5. R.Muthusamy Devar.
6. P.Karuppusamy.
7. P.Ganesan.
8. B.Thangavel.

... Defendants 4 to 8/Respondents 4 to 8/
Respondents

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 11.08.2017 passed in A.S.No.95 of 2012, on the file of II Additional Subordinate Court, Coimbatore, reversing the Judgment and decree dated 21.06.2012 passed in O.S.No.4028 of 2004 on the file of the III Additional District Munsif Court, Coimbatore.

For Appellant : Mr.P.Mathivanan

For R1 & R3 : Mr.R.Krishna Prasad,
for M/s.Sarvabhauman Associates

For R2, R5 & R8 : Died *vide* Court order dated 27.11.2023
& by order dated 16.10.2023

For R4, R6 & R7 : Not ready notice



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JUDGMENT

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The 1st defendant who suffered reversal finding at the hands of the First Appellate Court is the appellant before this Court.

2. The parties are described as per their litigating status before the trial Court.

3. The plaintiffs filed a suit to declare the election held on 29.10.2004 as not valid and not binding on them and for a permanent injunction to restrain the defendants from interfering with the duties or activities of the plaintiff Samugham.

4. The case of the plaintiffs was that the plaintiff Samugham was a registered body and the entire postings of the Office bearers was selected based on majority of members. It is the further case of the plaintiffs that the 3rd plaintiff was elected in the meeting held on 09.05.2004 as *Periyathanakkarar* and while the 3rd defendant was discharging the duties, the defendants objected to election of the 3rd plaintiff and all of a sudden, the defendants formed a committee and decided to elect a person to the post of *Periyathanakkarar* by



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vote. The 1st plaintiff gave a police complaint against the defendants on 08.09.2004 and the Police Officials advised the plaintiffs and the defendants to select the *Periyathanakkarar* in the presence of Tahsildar. However, according to the plaintiffs, the defendants proclaimed the date of election as 29.10.2004 to which the plaintiffs objected as it was not the custom or procedure for electing a person to the post of *Periyathanakkarar*. However, the defendants proceeded with the election and the 1st defendant was declared as elected to the said post of *Periyathanakkarar*. According to the plaintiffs, the election is illegal and invalid, without following procedure. It is also stated that though only married man have right to poll, ignoring the said rules all persons supporting the defendants were allowed to poll and therefore, the suit was instituted for the relief of declaration and permanent injunction.

5. The 1st defendant filed a written statement stating that the Samugham is not a registered body. Further, for the post of *Periyathanakkarar*, it is elected by majority members from time immemorial and in fact, the 1st defendant's grandfather was *Periyathanakkarar* for several years and thereafter, his uncle Muthusamy Naicker and after him, 1st defendant's brother Arumugam were elected *Periyathanakkarar*. The majority of members elected the 1st defendant to the post of *Periyathanakkarar* and same was confirmed by the



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Head Office of Tamil Nadu Uppiliappan Naicker Sangam, Tiruppur. While so, the 3rd plaintiff without the knowledge of the Samugham or the Tamil Nadu Uppiliappan Naicker Sangam created documents as if the meeting of members was held on 09.05.2004 in which meeting the 3rd plaintiff was elected as *Periyathanakkarar*.

6. It is a case of the 1st defendant that the members of the Samugham convened a meeting pursuant to the police complaint given by the 1st plaintiff. On 26.10.2004, a resolution was passed, fixing the date and place of the election, nomination, time as well as duration of election. All the members including the 3rd plaintiff consented to the same and nomination was fixed on 28.10.2004 and election was stated to be held on 29.10.2004. It is also stated that the 3rd plaintiff himself filed his nomination on 28.10.2004 and both the 3rd plaintiff as well as 1st defendant gave consent to accept to the result of election in writing. The election was held as agreed on 29.10.2004 between 4.00 p.m to 7.00 p.m and 1st defendant was declared successful and thereby, elected to the post of *Periyathanakkarar*.

7. It is also contended by the 1st defendant that the 3rd plaintiff had nominated an election agent and counting agent for overseeing the election as



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well as counting process and only because he had lost the election, he has instigated the other plaintiffs to join him and filed the suit. According to the 1st defendant, the plaintiff never acted as Office bearers after 01.05.2004 and therefore, have no *locus standi* to file the suit.

8. The 1st defendant further submitted that the election held on 29.10.2004 was only after following all required formalities and as per the resolution passed by the Samugham and therefore, the suit was liable to be dismissed.

9. The defendants 2 to 5 have filed separate written statement stating that they are not proper and necessary parties and contending that the suit was liable to be dismissed for mis-joinder of unnecessary parties.

10. The trial Court dismissed the suit and denied any relief to the plaintiffs. However, on appeal, the First Appellate Court reversed the findings of the trial Court and decreed the suit, elaborately going into the evidence adduced by the plaintiffs with regard to irregularities in the election process like, permitting unmarried men to vote and also noticing certain other irregularities at the time of voting and consequently, the First Appellate Court



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found that the election was not properly held and allowed the appeal, directing a fresh election to be conducted.

11. Aggrieved by the said reversal findings rendered by the First Appellate Court, the 1st defendant has preferred the above Second Appeal.

12. On 14.12.2023, this Court admitted the Second Appeal on the following substantial questions of law:-

“Whether the finding of the First Appellate Court that the election to the office of Periyathanakkarar was conducted in a proper way is vitiated by the perversity and is contrary to the evidence available on record?”

13. I have heard Mr.P.Mathivanan, Learned Counsel for the appellant and Mr.R.Krishna Prasad, Learned Counsel for the respondents 1 & 3 being the contesting respondents.

14. I have also gone through the pleadings, oral and documentary evidence adduced by the parties before the trial Court as well as the judgment



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of the trial Court and the First Appellate Court.

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15. The Learned Counsel for the appellant would submit that the trial Court had rightly found that the plaintiff had not made out a case for declaration and permanent injunction. However, according to the learned Counsel for the appellant, the First Appellate Court without any independent discussion has reversed the well considered findings of the trial Court placing reliance on oral and documentary evidence about which there was absolutely no pleadings in the plaint.

16. Further, the learned counsel for the appellant would contend that the First Appellate Court has not assigned any reasons for disagreeing with the findings of the trial Court and he would, therefore, pray for Second Appeal being allowed.

17. Per contra, Mr.R.Krishna Prasad, Learned Counsel for the respondents 1 & 3 would submit that right from the year 1961, the customary practice has been followed in electing persons to the post of *Periyathanakkarar* and he would invite my attention to the detailed discussion by the First Appellate Court with regard to the irregularities during the election process and



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he would, therefore, support the findings of the First Appellant and pray for dismissal of the Second Appeal.

18. I have paid my anxious and careful consideration with the rival submission advanced by the Learned Counsel on either side.

19. Admittedly, the specific case on which the plaintiffs approached the Court was on the allegation that the defendants acting against Rules and Regulations decided to elect *Periyathanakkarar* by vote, which was against even the customary practice adopted by Samugham. In this connection, the allegations in the plaint are available at paragraph No.5 and same is extracted as under:-

“The plaintiffs submit that the defendants are members of the Samugham. After election plaintiffs's of 3rd plaintiff, the defendants are objected for electing of the 3rd plaintiff. Because they suggested to elect the let defendant as a Periyathanakkarar. But as per the customary procedure the 3rd plaintiff is selected. The 3rd plaintiff's father was in Periyathanakkarar since 1984. After the demise of 3rd plaintiff's father, the election was held and the 3rd plaintiff was elected. (The plaintiffs submit that the defendants acting against the plaintiffs' rules and regulation. All of sudden the defendants have formed one committee and they have decided to elect



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Periyathanakkarar to choose by vote. The 1st plaintiff gave a complaint against the defendants on 8.9.2004. The police officer advice the plaintiffs and defendants to select Periyathanakkarar in presence of Tashildhar. The police complaint receipt is produced herewith as Document No.5. Nevertheless they proclaimed the date of election on 29.10.2004. Immediately the plaintiffs are objecting the same and advice the defendants that it is not procedure for electing a person. But the defendants have done an election and they proclaimed that the 1st defendant is won the election. The plaintiffs submit that the defendants have elected the 1st defendant by way of poll is illegal and also invalid. The plaintiffs submit that they have not followed any procedure. The plaintiffs submit that the married man only have right to poll. But all the peoples who are all supported to the defendants have polled. So the election held on 29.10.2004 is not valid and also not binding on the plaintiffs. They have not followed the procedure of Karpura Uppiliya Naicker Samugham. Without following the procedure they have done an election is not valid. Now the defendants are trying to interfere the activities of the plaintiffs. The defendants are openly proclaimed that they will act against the plaintiffs' activities. In view of the defendants the plaintiffs have come forward the suit."

20. Apart from the above, I do not find any pleadings with regard

to any specific instances of fraud or illegality committed by the defendants in



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the election. Further, as rightly pointed by the Learned Counsel for the appellant, there has been no plea or specific allegation as mandated under Order VI Rule 4 of C.P.C., the plaintiffs have also suppressed material facts and circumstances and having approached the Court with unclean hands, the plaintiffs are not entitled to any relief much less the relief of declaration and permanent injunction.

21. It is the specific case of the 1st defendant that the 3rd plaintiff also filed a nomination for the election to be held on 29.10.2004 and he ended up on the losing side, losing out to the 1st defendant by five votes. It is specifically averred by the 1st defendant that the 3rd plaintiff's election agent as well as counting agent had been nominated and they were present throughout the election, counting and declaration of result and therefore, the plaintiffs have totally suppressed all these material facts and filed the suit as if the defendants have gone about high-handedly in conducting the election.

22. The trial Court has rightly considered the oral and documentary evidence adduced by the parties and found that the plaintiff was not entitled to any of the relief prayed for. The trial Court also rightly found that the plaintiff had not filed any documents to support the claim that the post



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of *Periyathanakkarar* was hereditary in nature. The trial Court also relied on

Ex.A.10 in which the 3rd plaintiff has admitted to *abide* by the election result.

However, he had given oral evidence to the contrary. The First Appellate Court without relying on these material particulars, has chosen to pick out instances of irregularities from the evidence available on record without there being any pleadings in the first place.

23. It is trite law that no amount of evidence can be let in, in the absence of pleadings. Especially, in a case of this case where an election is challenged, the burden of proof in such cases, a much higher degree of burden is required to be discharged than in other cases. Unfortunately, as already extracted herein above, excepting vague allegations, the plaintiffs' claim is bereft of any material particulars, especially instances of fraud, irregularity or illegality.

24. More over, as rightly contended by the Learned Counsel for the appellant Mr.P.Mathivanan, the plaintiffs have suppressed the voluntary participation of the 3rd plaintiff in the election and only after ending up on the losing side, they have chosen to approach the Court, suppressing their participation. The 3rd plaintiff has filed his nomination and has also agreed to



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abide by the result of the Election as seen from Ex.A.10. Therefore, it is clear case where the plaintiffs have not approached the Court with clean hands and consequently, they ought to be non-suited.

25. Unfortunately, the First Appellate Court has proceeded to reverse the well considered findings of the trial Court based on documentary evidence which could not be relied on, in the absence of any pleadings and therefore, I am constrained to interfere with the consent and decree of the First Appellate Court.

26. For the above reasons, the substantial question of law is answered in favour of the appellant. Accordingly, the ***Second Appeal is allowed.*** No costs. Consequently, connected Miscellaneous Petition is closed.

22.03.2024

Index :Yes/No.
Internet :Yes/No.
Speaking order/Non-speaking order
Neutral Citation :Yes/No.
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Copy To:-

1. The II Additional Subordinate Court, Coimbatore.
2. The III Additional District Munsif Court, Coimbatore.



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P.B.BALAJI, J.

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Pre-delivery judgment made in
S.A.No.145 of 2018
& C.M.P.No.8077 of 2018



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