



C.R.P.(MD)No.1273 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/01/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.1273 of 2023

S.Erulappapandi : Petitioner/3rd Party/
(EC Member in 3rd
Respondent Society)

Vs.

1.Sathish Kumar
2.Santha Moorthy : Respondents 1 and 2/
Plaintiffs

3.Kurinji Manamagizh Mandram,
Society Rep. by its President,
S.M.Marudhappa Pandian

4.Saravana Krishnan

5.The Registrar of Societies,
Tenkasi-627 809.
Tamil Nadu.

6.The District Registrar (Administration),
Office of the Registrar of Societies,
Tenkasi-627 809.
Tamil Nadu.

: R3 to R6/Defendants

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to struck off the plaint in O.S No.56 of 2022 pending on the file of the District Munsif-cum-Judicial Magistrate Court, Sengottai.

For Petitioner : Mr.T.S.R.Venkata Ramana
Senior Counsel
for Mrs.V.Janaki Devi



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For R1 and R2 : Mr.A.Arfat Mohammed
For R3 and R4 : Mr.V.Sakthi
(No appearance)
For R5 and R6 : Mr.S.Shanmugavel
Additional Government Pleader

O R D E R

This civil revision petition has been filed seeking to struck off the plaint in O.S No.56 of 2022 pending on the file of the District Munsif-cum-Judicial Magistrate Court, Sengottai.

2.The facts in brief:-

The respondents 1 and 2 herein as plaintiffs filed a suit in O.S No.56 of 2022 before the District Munsif-cum-Judicial Magistrate, Sengottai with the following averments:-

(i)The first defendant namely Kurinji Manamagizh Mandram is a registered Society under the provisions of the Tamil Nadu Societies Registration Act, 1975. It came into existence, on 17/09/2014. There is a Bye-Law to cover the functioning of the Society. On 14/10/2022, new members were appointed by the above said Mandram and the plaintiffs were elected as Secretary and Treasurer.



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Tenure of the office-bearers is only three years. Once in three years, election will be held as per the Bye-Laws. If any vacancy arises that will be filled up by convening a General Body Meeting or Special General Body Meeting.

(ii)The President of the Society by name Mr.S.M.Marudhappa Pandian came to the office, on 06/01/2020 along with some people, removed plaintiffs and other Executive Members out of the Registered office and locked the office, illegally. A complaint was lodged, on 06/01/2020 itself before the Sengottai Police Station and CSRs were issued in 34 and 35 of 2020, on 11/01/2020. In the enquiry, which was held, on 27/01/2020, the Inspector of Police, attached to Sentottai Police Station sent a communication to the District Registrar of Societies that since issue exists between the parties, no registration of the documents can be carried by the Registrar. During the police enquiry, it was informed that the plaintiffs and other Executive Members were removed from the first defendant's Society and stated that Form-7 was also filed, on 11/01/2021. As mentioned in Form-7, no Maha Sabha meeting was held. It is a forged document. It also came to know that Form-7 submitted by the plaintiffs was cancelled, but whereas accepted the Form-7 filed by the rival parties. They filed appeal. The 4th defendant



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conducted enquiry and stated that against the Bye-Laws, the defendants 1 and 2 have acted.

(iii)RT reply was obtained from the concerned authorities in this regard. Against the order, the 4th defendant in accepting the Form-7 filed by the defendants 1 and 2, the first plaintiff filed WP(MD)No.17052 of 2021. That was disposed of granting liberty to the first plaintiff to file appropriate civil suit and also held that the 4th defendant has no right to pass any orders in this regard.

3.With the above said averments, the suit is filed seeking the relief of declaration that Form-7, dated 11/01/2021 as null and void and for consequential injunction restraining the second defendant and newly elected members acting on behalf of the first defendant and for cancellation of Form-7, dated 11/01/2021.

4.Along with the plaint, IA No.3 of 2022 was filed for ad-interim injunction. After issuing notice, ad-interim injunction was granted, on 14/12/2022. Now the suit is pending before the trial court.



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5. Pending proceedings, this civil revision is filed by this petitioner as an Executive Member of the Society seeking in order to reject the plaint on the following grounds:-

The order passed by the District Munsif, Sengottai, on 04/12/2020 in IA No.3 of 2022 is against law; Section 80 of the Civil Procedure Code is not complied by the plaintiffs; without hearing the respondents, IA No.3 of 2022 was decided granting an-interim injunction; The prayer in IA No.3 of 2022 is an independent relief sought for in the plaint, which is not maintainable; In violation of the order passed by this court, WP(MD)No. 17052 of 2021, the suit is filed seeking for the very same relief; By way of interim order, 13 elected members were non-seated; Without hearing the aggrieved persons, the order has been passed; The suit as framed is not maintainable, since accepting or rejecting Form-7 is only administrative action, unless challenge is made to the Maha Sabha meeting, the plaint is not maintainable; WP(MD)No.8992 of 2022 is also filed to de-seal the Society premises; The first plaintiff is not in possession of the properties.

6. Heard both sides.



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7. With regard to the preliminary point, that was raised by the learned Senior Counsel appearing for the petitioner over the non-compliance of section 80 of the Civil Procedure Code, report is called for from the concerned trial court. Report was submitted by the trial court, by letter, dated 08/01/2024 stating that along with the plaint, a petition under section 80(2) of C.P.C was filed, numbered as IA No.2 of 2022. That was allowed, dispensing the notice. Thereafter only, the plaint was taken on file.

8. Reading of the report does indicate that proper procedure was followed by the trial court, while entertaining the plaint. So it is seen that the first ground, which is made by the petitioner is not correct on record. So that ground is not available to the petitioner now.

9. On seeing this response from the trial court, now the learned Senior Counsel appearing for the petitioner would submit that even though, the suit was entertained by the trial court, but passing of any interim order is totally prohibited in the absence of the Public Officer; The order can be passed only after hearing the parties.



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10. Section 80(2) CPC reads as under:-

"(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1)."

11. Even for this argument, the learned counsel appearing for the respondents 1 and 2 would submit that it is not an ex-parte injunction order, actually notice



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was ordered to the respondents and the case was posted to 14/12/2022. The respondents 3 and 4 appeared on that date and filed vakalath. But did not file any counter. The order was passed, on 14/12/2022 in the presence of the 3rd and 4th respondents' counsel. So, according to the learned counsel appearing for the respondents 1 and 2, no illegality was committed by the trial court in passing the interim order. Apart from that, he has also submitted that when appeal remedy is available, without resorting the same, seeking an order to reject the plaint is not at all maintainable.

12.For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others [(2019) 9 SCC 538]***.

13.Apart from that, he would also submit that revision is not maintainable by invoking the jurisdiction under Article 227 of the Constitution of India in the nature of the issue. For that purpose, he would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Jai Singh and others Vs. Municipal Corporation of Delhi and another [(2010) 9 SCC 385]***.



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14. In response to this argument, the learned Senior Counsel appearing for the petitioner would submit that what is challenged in this revision is the illegality committed by the trial court. Merely because, appeal remedy is available, is not a bar for invoking the jurisdiction under Article 227 of the Constitution of India. Apart from that, it is also submitted that without hearing the real aggrieved persons, the above said order has been passed, which according to him, is illegal.

15. No doubt that the persons, who alleged to have the real aggrieved persons, as pointed out by the learned Senior Counsel appearing for the petitioner, were not arrayed as defendants or respondents, as the case may be. So the plaintiffs ought to have added, all the aggrieved persons as party defendants or respondents.

16. But again for this issue, the learned counsel appearing for the respondents 1 and 2 would submit that even as per the Bye-Laws of the Society, the competent persons are the parties before the trial court. But unfortunately, the Bye-Laws of the Society is not made available to this Court to record any finding on that point. So that issue can be taken by the trial Court at the appropriate stage.



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17. So I am not expressing any opinion on this point now. But the question, which arises for consideration is whether the plaint can be rejected on this point.

18. As pointed by the respondents, appeal remedy is always available to the parties over the order passed by the trial court. Without resorting to such appeal remedy, this revision has been filed seeking rejection of the plaint.

19. Now we will examine whether any of the grounds mentioned in Order 7 Rule 11 CPC, are made out.

20. Order 7 Rule 11 CPC reads as under:-

"11. 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 unvalued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;



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(c)where the relief claimed is properly valued, but the plaint is written upon proper 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 to comply with the provisions 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 the 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."



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21.With regard to the point, whether there is any cause of action for the suit, the learned Senior Counsel appearing for the petitioner would submit that absolutely, there is no cause of action and even the cause of action raised in the plaint, now has become infructuous because of lapse of time. He will be referring to the tenure of the elected office-bears. But I am not going on this aspect. It is a matter for the trial court to take up the issue.

22.The cause of action mentioned in the plaint arose when Form-7 was rejected by the Registrar of Societies. So according to the plaint averments, it is a forged document. Whether it is a forged document or not, this court cannot make any discussion.

23.Even though, the learned counsel appearing for the respondents 1 and 2 has impressed upon the Court that *prima facie*, the document is a forged one, I am not entertaining this argument, because it requires complete, proper evidence and proof. But on the face of the plaint, the cause of action is available to the plaintiffs, that cannot be questioned.



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24.Now the learned Senior Counsel appearing for the petitioner would submit that against the order passed by this Court in WP(MD)No.17052 of 2021, very same relief is sought in the plaint, which according to him, is not at all maintainable.

25.Per contra, the learned counsel appearing for the respondents 1 and 2 would submit that what is challenged is Form-7, which according to them, is a forged one. There is no bar for challenging Form-7. Apart from that, it is also submitted that their consistent case is that never Maha Sabha meeting was held as mentioned in Form-7. According to them, when such being the case of the respondents, there is no illegality in making such prayer. I leave the matter to be decided by the trial court. So, I find that there is cause of action for the plaintiffs.

26.The next point is whether it is barred by any Law. For that, the learned Senor Counsel appearing for the petitioner would submit that there is no compliance of section 80(2) of C.P.C. Apart from that, it is also submitted that the aggrieved parties were not impleaded. He would further submit that it is a clear case of abuse of process of court, even the basic fundamental procedure for framing of suit is also not mentioned.



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27. But per contra, the learned counsel appearing for the respondents 1 and 2 would submit that this argument is not at all maintainable, since even now, it is not barred by any law for the plaintiffs to make any amendment in the plaint. What can be construed is an abuse of process of court, he would also rely upon the judgment of the Hon'ble Supreme Court in the case of ***K.K.Modi Vs. K.N.Modi and others [(1998) 3 SCC 573]***.

28. No doubt that they are some disputable facts. Issues are to be tried to its logical conclusion. Whether the Maha Sabha, as mentioned in Form-7, submitted to the competent authority, which is now disputed, took place or not is a matter for consideration by the trial court.

29. Whether Form-7 is a forged document is also to be decided by the trial court.

30. No doubt that the elected members in the disputed Society meeting are the aggrieved persons. They can very well make their objection through appropriate process before the trial court itself. As pointed out earlier, they can also file appeal against the interim order passed by the trial court. So all these things can be tried out by the parties through appropriate proceedings



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before the concerned forum. Invoking jurisdiction of this court under Article 227 of the Constitution of India, more specifically, in the light of the disputed facts, I am of the considered view that it is out of place and cannot be entertained.

31.I find absolutely no reason to entertain this revision. None of the grounds mentioned in the revision are maintainable. All these points are left to be decided by the trial court.

32.In the result, this civil revision petition is **dismissed**. No costs.

18/01/2024

Index:Yes/No
Internet:Yes/No
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Note:Issue order copy on 23/01/2024

To,

The District Munsif-cum-Judicial Magistrate,
Sengottai.



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G.ILANGO VAN, J

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