



C.R.P.(MD)Nos.1951 & 1962 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)Nos.1951 & 1962 of 2021

and

C.M.P.(MD)Nos.2382 & 2392 of 2024

and

C.M.P.(MD)Nos.10555 & 10556 of 2021

Latin Catholic Fishermen's Educational Society,

Registration No.13/78,

Represented by its President Rev.Fr.Sylvester Morais,

St.Jude's College,

Thoothoor,

K.K.District.

... Petitioner / third party

(In Both C.R.Ps.)

Vs.

1.Leenus (died)

2.A.Xavier (died)

... Respondents / Plaintiffs

3.Rev.Fr.Joseph Justus (died)

S/o Marya Pauline Nevis,

(Camp) St.Mary's Church,

Colachel Post,

Colachel Village,

Kalkulam Taluk,

Kanyakumari District.



C.R.P.(MD)Nos.1951 & 1962 of 2021

(Memo dated 20.11.2023 filed on 22.11.2023 is recorded to the effect that R3 died and since he (Priesthood) claimed right in respect of his membership, the question of impleading his Lrs would not arise, vide order dated 23.11.2023 made in CMP(MD)Nos.15920 to 15922, 15924, 15925 & 15927 of 2023 in C.R.P.(MD)Nos.1951 & 1962 of 2021 by KMSJ)

4.Ref.Fr.M.Stephen

S/o.Mudiappan,
(Camp) St.Mary's Church,
Colachel Post,
Colachel Village,
Kalkulam Taluk,
Kanyakumari District.

5.Registrar of Societies,

Marthandam Sub District,
Kuzhithurai.

6.The Director of College Education,

College Road,
Chennai.

7.The Joint Director of College Education,

Tirunelveli Region,
Tirunelveli-7.

8.Latin Catholic Fishermen Education Society,

(as claimed by 1st & 2nd Respondent)

Rep. by Secretary Rev.Fr.Stephen,

Residing at

(Camp) St.Mary's Church,

Colachel Post,

Colachel Village,

Kalkulam Taluk,

Kanyakumari District.

Rev.Fr.Xavier Alexander (Deceased) ... Respondents / Defendants 1 to 7

9.Amalorpavam



C.R.P.(MD)Nos.1951 & 1962 of 2021

10. Shirley

11. Sholihaka

(Respondents 9 to 11 are residing at Manvalakurichi Post, Chinnavilah, Kanyakumari District-629 252.

Respondents 9 to 11 are brought on record as LR's of the deceased 1st respondent vide order dated 29.02.2024 made in C.M.P.(MD)Nos.15920, 15921 & 15922 of 2023 in C.R.P.(MD)No.1951 of 2021 by MSKJ)

12. Pushparith A Rajam

13. Alex Xavier Joe

14. A.X. Smith

(Respondents 12 to 14 are residing at 3/50, Vaniakudi Post, Colachel Village, Kualkulam Taluk, Kanyakumari District.

Respondents 12 to 14 are brought on record as LR's of the deceased 2nd Respondent vide common order dated 04.04.2024 made in C.M.P.(MD)Nos.3683 & 3689 of 2024 in C.R.P.(MD)Nos.1951 and 1962 of 2021 by LVGJ)

15. The Registrar,
Manomaniam Sundaranar University,
Tirunelveli.

16. The Tamil Nadu Government,
Represented by the Secretary,
Higher Education (Collegiate Department),
Chennai.

(15th & 16th Respondents are suo motu impleaded as per order of this Court dated 18.04.2024 made in C.R.P.(MD)No.1962 of 2021 by LVGJ.)

... Respondents
(In Both C.R.Ps.)



C.R.P.(MD)Nos.1951 & 1962 of 2021

Common Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order dated 16.08.2021 & 21.09.2021 in O.S.No.183 of 2011 on the file of the District Munsif Court, Eraniel.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.T.Amjad Khan
Government Advocate for R6, R7 & R16

: Mr.V.Sasikumar for R12 to R14

: Mr.S.Ramsundar Vijayaraj for R4 & R8

: Mr.V.Karthik Raja
for M/s.Ajmal Associates for R15

: R1 to R3-Died

: R5-service awaited

(both C.R.Ps) : R9 to R11 – batta due

COMMON ORDER

Heard both sides.

2. The case on hand pertains to the affairs of the Latin Catholic Fishermen Educational Society. It is a society registered under Tamil Societies Registration Act, 1975. One Leenus and A.Xavier filed O.S.No.183 of 2011 on the file of the Principal District Munsif Court, Eraniel seeking declaration that the election of the office bearers of the society in the general body meeting held on 17.09.2021 is null and void. Permanent injunction was sought against the



C.R.P.(MD)Nos.1951 & 1962 of 2021

official defendants from ratifying the said meeting. Interestingly, some unusual features are evident on the very face of it. Both the plaintiffs namely Leenus and Xavier were admittedly not the members of the society. The persons shown as defendants were not the ones who were elected in the general body meeting held on 17.09.2011. Neither Rev.Fr.Joseph Justus nor Rev.Fr.M.Stephen were competent to represent the society from the year 2011 onwards. They were erstwhile office bearers. It is well settled that tenure of any elected committee is 3 years as per Section 15 of the Tamil Nadu Societies Registration Act, 1975. The suit ought to have been dismissed as infructuous by the year 2014 if it did not warrant dismissal earlier on the ground of locus standi. Be that as it may, in 2021, the court below appears to have invoked Section 89 of the Code of Civil Procedure. The impugned orders read that the members of the society appeared before the court on 23.04.2021 and that it was decided to conduct a fresh election. A counsel by name Mr.John Xavier was mandated to issue notice to the counsel on either side as well as the members of the society and conduct election on 18.09.2021. The court below recorded that on 18.09.2021, some 10 persons were elected as office bearers of the society. O.S.No.183 of 2011 was thus disposed of on 21.09.2021 by recording the developments. The judgment reads that Leenus (first plaintiff) was examined as P.W.1. It now turns out that Leenus had passed away on 09.08.2020 itself.



C.R.P.(MD)Nos.1951 & 1962 of 2021

When one of the plaintiffs had passed away, the said fact ought to have been recorded and his legal heirs should have been brought on record. The suit itself was disposed of on the basis of compromise. Compromise can be effected only between the concerned parties to the lis. It has already been noted that the plaintiffs were non-members. They could not have been parties to any compromise involving the affairs of the registered society. That apart, the defendants shown in the cause title were not competent to represent the society. It appears that there is an internal dispute regarding the management of the society. Therefore, Form 7 ought to have been called for. It is seen that the forms filed by both the groups had not been accepted for filing by the District Registrar of the Societies.

3. I fail to understand as to how Rev.Fr. Stephen could have represented the society. This was not a matter in which Section 89 of C.P.C could have been invoked at all. In fact, in *Afcons Infrastructure Ltd., Vs. Cherian Varkey [2010 (8) SCC 24]*, it was held that the stage at which the court should explore whether the matter should be referred to the ADR method even after the pleadings are completed and after framing the issues. It was also held that the representative suits which involved the interest of number of persons who are not before the Court are normally not considered to be suitable for ADR



C.R.P.(MD)Nos.1951 & 1962 of 2021

methods having regard to their nature. The aforesaid decision squarely applies to the case on hand.

4. The impugned decree has to be faulted primarily on the ground that it is in the name of a dead person. It is not known if all the members of the general body were put on notice. In any event, the court below could not have on its own appointed an advocate commissioner for conducting the election in the suit society.

5. Looked at from any angle, the procedure adopted by the court below appears to be grossly in breach of the statutory provision. Though the revision petitioner herein was shown as defendant in the suit, it was represented by a person who was not competent to represent. The suit had been disposed of on the basis of a conciliation report. The petitioner could not have availed remedy under Section 96 of C.P.C. In this background, invocation of the supervisory jurisdiction under Article 227 of the Constitution of India is very much in order. The object of conferring supervisory jurisdiction on the High Court is to ensure that the courts below act within their bounds. In this case, I clearly find that the court below had acted in breach of the statutory procedure and had not even taken note of the fact that the first plaintiff had passed away. If the matter was proposed to be disposed of on the basis of compromise, the plaintiffs ought to



C.R.P.(MD)Nos.1951 & 1962 of 2021

have been directed to be appear in person. The suit itself deserved burial as infructuous. An infructuous suit was kept alive for several years and thereafter a force of a compromise was arrived at and the suit was disposed of on that basis. The impugned Judgment and decree is set aside.

6. But the matter cannot rest there. When the civil revision petitions were listed for hearing on 31.01.2022, the following order was passed:-

“ The revisions arise out of the interim and final Judgment passed by the learned District Munsif, Eraniel on the basis of a Compromise. The Revision Petitioner is a third party who claims to be in management of the respondent society. Their contention is that although the party had made allegations against the office bearers which also includes the petitioner Rev.Fr.Sylvester Morais, President of the petitioner Society and 8 others, these persons have not been made a party to the proceedings. Thereafter the plaintiffs and persons totally unconnected with the management, who were made parties to this proceedings by the plaintiff, entered into a compromise and a Judgment and Decree has come to be passed on the basis of their compromise.

2. When the revision had come up for admission, the persons who have now been declared elected by virtue of this impugned Judgment and who are the contesting respondents had entered appearance. After hearing both the parties this Court was of the opinion that an Administrator should be appointed till the disposal of these revisions where serious allegations of fraud, collusion and suppression had been alleged by the Revision Petitioner.



C.R.P.(MD)Nos.1951 & 1962 of 2021

The Jurisdiction of this Court has been invoked for the aforesaid reasons. If these Revision Petitions are allowed then all actions taken by the persons who now claim to be in management would be void and in view of the impugned judgment persons who claim that they continue in management are unable to manage the Society. It was in these circumstances that this Court had decided to appoint an Administrator as an interim measure till the disposal of these Civil Revision Petitions and both parties have agreed to the nomination of Hon'ble Justice N.Kirubakaran, retired Judge of this Court as the Administrator of the petitioner/8th respondent Society.

3. The Administrator shall take over the management and administration of the Society and all institutions coming under the control and management of the Society. He shall have the assistance of Mr.S.D.S.Philip, Advocate, Address: No.276, New Additional Law Chamber, Madras High Court, Chennai-104, Mobile No.9444451299 and Enrollment No.1579/1992. The parties have also agreed that considering the anomaly in the bye-laws, the Administrator shall endeavour to amend the bye-laws, taking inputs from both the parties and thereafter place the same before the General Body for its approval.”

7. It is seen that the byelaws of the society are not in tune with the statutory scheme governing the Tamil Nadu Societies Registration Act. The society is also running an aided educational institution. There is a serious power tussle between the rival factions. That is why, the above order was passed by this Court. The said order is made absolute. The Hon'ble Administrator is requested to convene the general body, effect appropriate amendments in the byelaws and also to conduct the election so that the elected



C.R.P.(MD)Nos.1951 & 1962 of 2021

body takes charge. The Hon'ble Administrator will endeavor to conclude the same as expeditiously as possible.

8. Both the civil revision petitions are allowed. Consequently, connected miscellaneous petitions are closed.

04.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

- 1.The District Munsif Court, Eraniel.
- 2.The Director of College Education,
College Road,
Chennai.
- 3.The Joint Director of College Education,
Tirunelveli Region,
Tirunelveli-7.
- 4.The Secretary,
Higher Education (Collegiate Department),
Chennai.



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C.R.P.(MD)Nos.1951 & 1962 of 2021

G.R.SWAMINATHAN, J.

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C.R.P.(MD)Nos.1951 & 1962 of 2021

04.09.2024