

(1991) 09 MAD CK 0071

In the Madras High Court

Case No : C.M.A. No. 749 of 1991

A. Shanmugasundara Pandia Nadar and another

APPELLANT

Vs

Raja Vaithialingam himself and on behalf of 27 others elected
to the Administrative Council of Dakshinamara Nadar
Sangam Tirunelveli Junction

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 21 Rule 101, Order 21 Rule 97, Order 21 Rule 98, Order 39 Rule 1

Citation : (1991) 09 MAD CK 0071

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : V. Sridevan for Mr. S. Shanmughavelayutham, S. Samuvel Raj Pandian, A. Angayar Kanni and T.P.K. Natarajan, for the Appellant;

Judgement

Srinivasan, J.—(i) When this appeal was admitted on 14.8.91, Mr. K. Sridhar appearing as Senior Counsel to the Advocates on record prayed for time to file counter. He prayed for four weeks' time and contended that no interim order should be passed. That request was opposed by Learned Counsel for the appellants. Hence I granted two weeks time for filing counter and it was agreed at that time by all counsel that the appeal would itself be heard on the adjourned date. The matter was adjourned by two weeks without any interim order of stay. But, it was not posted on the expiry of two weeks. It was posted in the list only on 3.9.91. On that day, Mr. Sridhar appearing for the respondents as senior counsel prayed for further adjournment on the ground that an application has been filed before the Supreme Court of India for clarification of its order in SLP No. 14222 of 1990 and that the same stood posted to 16.9.1991. He wanted adjournment of this matter till 17.9.1991. I refused to grant adjournment reminding him of what was agreed to on 14.8.91. As he was not ready to argue the matter, I granted him time till 2.15 P.M. today. The matter was specifically posted to 2.15 P.M. today and counsel were directed to get ready for argument.

(ii) This morning Mr. S.K. Sundaram appearing for the respondents prayed for adjournment. I refused to grant it. He states that he went to the Chief Justice and made a representation for transferring the case to some other Judge. When the matter was called at 2.15 P.M. he made a reference to his request to the Chief Justice and prayed for further time. So far there is no order of the Chief Justice transferring the matter from my file to another Judge. In view of the recent judgment of the Division Bench of this Court, the Chief Justice has no jurisdiction to transfer the matter to any other Judge, when it is posted in one list. Whatever it may be there is no order of transfer till now.

(iii) I proceeded to hear Mr. V. Sridevan, Senior Counsel appearing for the appellants. He finished his arguments at 3.15 P.M. When I called Mr. S.K. Sundaram to argue for the respondent, he represented that he had not gone through the records and he wanted time till Monday. I refused to adjourn the matter. Then he modified his request and prayed for adjournment till tomorrow, so that he can go through the records. Reluctantly, I adjourn the matter till 10.30 A.M. tomorrow. No further time will be granted. The matter shall be posted as the first case above motion cases tomorrow at 10.30 A.M. for further hearing, and marked part heard.

This matter was heard in part yesterday. After hearing counsel for the appellants, I passed an order stating the reason for my adjourning the matter till this morning at the request of Mr. S.K. Sundaram, Advocate. My order of yester-date shall also be annexed to the present order and both must be read together as one order. When the matter was called this morning, M/s. A. Bobbilas and K. Murugan, who are counsel on record represented that they had given their consent for change of vakalat on 3.9.1991 itself. Mr. S.K. Sundaram represented that he filed vakalat for the respondent yesterday. So far the vakalat has not come to the file.

2. Mr. S.K. Sundaram represented that he has been instructed by his clients to pray for two weeks adjournment on the ground that they want to bring a senior counsel from Delhi to argue this matter. I refused to adjourn the matter.

3. He raised objections to my hearing the appeal. Those objections are: (1) I had already disposed of C.R.P. No. 2308 of 1990 in which I had held against the respondent herein and I should not hear the present matter; (2) An objection was raised by then counsel on record that the appeal should not be posted before me for admission (3) I am empowered by the Chief Justice to dispose of only C.M.Ps. and not main matters. Hence, I should not hear the C.M.A.; (4) Mr. S.K. Sundaram stated that he made a representation to the Chief Justice yesterday that the matter should be transferred to some other learned Judge and again this morning he met the Chief Justice and reiterated the request. He stated that he informed the Chief Justice of my observation made in Court yesterday that the Chief Justice had no jurisdiction to transfer the matter; (5) Hearing the appeal within a short time after admission and posting it at the top of the list today are unheard of in this Court.

4. I am rejecting all the above objections. I have already given my reasons in the order passed yesterday as to why this matter is heard now. I have pointed out that counsel who appeared for the respondent previously agreed to argue the appeal and time was granted for that purpose to enable him to prepare for the arguments. The practice obtaining in this Court is to hear appeals and revisions arising out of interlocutory proceedings or execution matters along with the civil miscellaneous petitions as invariably the arguments in C.M.Ps. will be the same as those in the main appeals and revisions. That is why counsel who appeared for the respondent at the time of admission agreed to argue the appeal in two weeks. But the respondent is not interested in an early disposal of the appeal and he changed his counsel with a view to get adjournment and prolong the matter. The advocate who entered the scene for the only purpose of requesting the Court to adjourn the matter raised frivolous objections to my hearing the matter when his request was rejected. The first objection that I should not hear this matter as I have disposed of C.R.P. No. 2308 of 1990 is meaningless. I have given specific directions in that Civil Revision Petition that the 34 persons who are said to have been elected in the administrative council should hand over charge. The same persons applied to the Supreme Court for special leave against my order and challenged my order. Their challenge failed. The Special Leave Petitions are dismissed and they have filed the present suit out of which this appeal arises. This contention that I should not hear the C.M.A. which arises out of the interlocutory order is not sustainable. The second objection is not available to the respondent as the Chief Justice has passed an order in writing on 12.8.1991 on the letter written by counsel on record on 9.8.1991 that the matter should be posted before me only for hearing. Hence, there is no substance in the objection. Equally, there is no substance in saying that I am empowered to dispose of only C.M.Ps. I met the Chief Justice last evening and told him about the representation made by Mr. Sundaram yesterday. The Chief Justice informed me that he rejected the request for transfer made by Mr. Sundaram and directed me to proceed with the hearing of the appeal.

5. After overruling his objections, I requested Mr. Sundaram to argue on the merits. He represented that he has not been instructed to argue the matter on merits and he was engaged only to pray for an adjournment. It is highly disturbing and distressing to note that an advocate is engaged for the purpose of seeking adjournment of a case specially posted for hearing with the consent of counsel on record. No litigant shall be allowed to play with the Court by indulging in such tactics but unfortunately a member of the noble profession agrees to play a role and accepts vakalath for the sole purpose of seeking adjournment. Such conduct deserves nothing but condemnation.

6. As Mr. Sundaram has reported "no instructions" to argue the appeal on merits for the respondent, I had the respondent's name called out thrice by the Court Officer. The respondent has not appeared. Hence, I proceeded to dispose of the appeal on the basis of the arguments advanced by the appellants' counsel and the records available before me.

7. This case has got a long history. It is sufficient if I start the narration with my order dated 9.10.1990. That was an order passed in C.R.P. No. 2308 of 1990 filed by the appellants in the present appeal. That revision was against the order of the Principal District Judge, Tirunelveli in I.A. No. 516 of 1990 in O.S. No. 33 of 1988. By the said order, the Additional District Judge upheld the validity of an election to the Administrative Council of the Dakshinamara Nadar Sangam, Tirunelveli. The election was held by a Commissioner appointed by the Court. The validity of the election was challenged on the ground that the election was held in violation of orders of competent courts granting injunctions restraining the holding of election. The matter was argued at length before me by both parties. One of the objections raised before me in the revision petition was that the 34 persons who were elected as members of the Administrative Council were not impleaded as parties in the application before the Additional District Judge or in the revision petition. That was raised as a preliminary objection as to the maintainability of the application in the Court below as well as the revision petition. I dealt with the objection in extenso and overruled the same. Paragraphs 14 to 21 in my order deal with the objection. After referring to the relevant authorities on the subject, I observed as follows:

Hence, I overrule the preliminary objection raised by Learned Counsel for the third respondent and hold that the application in the Court below and this revision petition are maintainable and not vitiated in any manner by the non-joinder of the successful candidates in the election or the Commissioner who held the election.

I proceeded to dispose of the revision petition on merits and ultimately I allowed the same and held that the election was null and void. I gave a direction to the newly elected members of the Administrative Council in the following terms: It is slated that the newly elected 34 members of the Administrative Council have taken charge of the management after election. They shall hand over the management back to the petitioners herein who are entitled to continue in office till the new office bearers assume office, on or before 31st October, 1990.

8. On 14.10.1990, a petition was filed for extension of time. The petition is purported to have been filed by the Sangam. An affidavit in support of the petition was filed by Mr. Dhanraj, who claimed to be the Secretary of the Sangam. In that application, extension of time was prayed for handing over charge till 30.11.1990. The application came up for orders only on 25.10.1990. But, in the meanwhile, an SLP was filed by the Sangam represented by its Secretary in the Supreme Court. That was taken on file as SLP No. 13773 of 1990. The Supreme Court dismissed the same on 24.10.1990. The following is the order passed:

The SLP is taken on Board. Heard Mr. Subba Rao at length. The SLP is dismissed.

On the same day, another SLP which was filed by Pon Subbiah, the President of the Sangam and one Sundararajan, a member of the Administrative Council on

being mentioned to the Court though not numbered was also heard along with 5.L.P. NO. 13773 of 1990. That petition was also dismissed.

9. When the petition for extension of time came before me, it was contested by the appellants herein and I dismissed the same on 25.10.1990. On that date, another SLP was filed by the respondent herein and Dhanraj. The respondent is the Assistant Secretary of the Sangam and Dhanraj is the Secretary. Both of them representing the Sangam filed S.L.P., which was numbered as 14222 of 1990. That came up for hearing on 10.12.1990. The petition was dismissed. The following order was passed by the Supreme Court:

Heard. The Special Leave Petitions are dismissed. It is open to the petitioners to approach the proper court for such reliefs as they are entitled.

It appears that one Narayanan, another member of the Administrative Council filed SLP which was taken on file as SLP No. 15580 of 1990. That petition was also heard along with SLP No. 14222 of 1990 and dismissed.

10. In the interregnum, Dhanraj, the Secretary and Mr. T. Rajagopalan, a member of the Administrative Council filed a suit in this Court in C.S. No. 1037 of 1990 on 30.10.1990 for permanent injunction restraining the appellants herein from interfering with their function as Secretary and Administrative Council members of the Sangam. The pendency of that suit was referred to by the appellants herein in the Supreme Court when SLP NO. 14222 of 1990 was brought up for hearing. The plaintiffs in that suit C.S. No. 1037 of 1990 filed an affidavit in the Supreme Court stating that they were ill-advised in filing the suit C.S. No. 1037 of 1990 and that they would take steps to withdraw the said suit. That affidavit was filed on 10.12.1990, but the suit was not withdrawn till 22.8.1991.

11. After the disposal of the above SLP No. 14222 of 1990, the respondent filed a suit in this Court for declaration that the order dated 9.10.1990 passed by me in C.R.P. No. 2308 of 1990 would not bind him and his colleagues in the Administrative Council of the Sangam and for consequential injunction restraining the appellants herein and their associates, men and agents from interfering with the peaceful possession and management of the Sangam. There are certain curious features to be noted. The suit is filed by one Raja Vaithialingam. It is described in the cause title that he has filed it for himself and on behalf of 27 others elected to the Administrative Council of Dakshina Mara Nadar Sangam. He does not say in the plaint that he is holding a power of attorney for the other 27 persons; nor does he say that all the 28 persons met together and passed a resolution empowering him to file a suit. He has not adopted the procedure prescribed by Order I, Rule 8 of the Code of Civil Procedure. However, the suit is filed by him as if it could be filed by one person on behalf of 28 persons including himself. Secondly, the Director of Collegiate Education and the Inspector General of Registration are shown as parties as defendants 4 and 5 in the cause title. In paragraph 57 of the plaint it is stated as follows:

Defendants 4 and 5 are made as formal parties to this suit in order that the decree may be passed against defendants 1 and 2. Hence, S. 80 , C.P.C., notice is not necessary

I am personally unable to understand what is meant by the first sentence in the above extract. At any rate, it is clear that defendants 4 and 5 have been shown as parties only for the purpose of filing the suit in this Court. Thirdly, it is slated in paragraph 13 of the plaint that 27 persons were elected as members of the Administrative Council and their names were set out. Though in the cause title, it was mentioned that the plaint was by Raja Vaithialingam for himself and on behalf of 11 others thus making a total of 28, paragraph 13 of the plaint gives a different version. Further, 34 members were elected. There is no reference whatever in the plaint to the remaining seven. Fourthly, the plaint refers to SLP No. 14222 of 1990 only and there is no whisper of the dismissal of the other three S.L.Ps.

12. The Registry had a doubt as to the maintainability of the suit. It prepared a note and placed the matter before the Judge in charge. Mr. Justice Maruthamuthu after hearing the plaintiffs counsel passed an order on 1st April, 1991. In that order, the learned Judge has taken the view that all suits relating to the Sangam and the Administrative Council as well as election to the Administrative Council should be filed only in District Court, Tirunelveli as directed by me in my order dated 9,10.1990 in C.R.P. No. 2308 of 1990. The learned Judge has observed as follows:

In the circumstances. I feel that the present suit also should be transferred suo motu to the Court of the First Additional District Judge, Tirunelveli under S. 24 of the CPC for trial and disposal along with the other proceedings referred to above. It appears to me that the plaintiff could have straightway filed the suit in the District Court, Tirunelveli, if there is bona fide.

Though the learned Judge had suspicion about the bona fides of the plaintiff, he directed the office to number the suit and transfer the same to the Court of the I Additional District Judge, Tirunelveli to be tried and disposed of along with the other proceedings mentioned in the order.

13. Thus, the suit was transferred to the file of the District Judge, Tirunelveli and it was posted before the I Additional District Judge, Tirunelveli. It was numbered as O.S. No. 2 of 1991 in that Court. An application filed by the plaintiff for injunction till the disposal of the suit was numbered as I.A. No. 73 of 1991. That application was contested by the appellants herein on receipt of notice. After hearing both parties, the I Additional District Judge, Tirunelveli passed an order on 2.7.1991 granting injunction in favour of the plaintiff restraining the appellants from interfering with the plaintiffs enjoyment of the administration of the Sangam till the disposal of the suit.

14. This appeal is against the said order of the learned I Additional District Judge, Tirunelveli. One of the contentions raised before the Court below is that

the suit is not maintainable and no interim relief could be granted to the plaintiff in the suit. The application was also contested on merits. The learned I Additional District Judge has relied on the observation of the Supreme Court in the order dated 10.12.1990 that it is open to the petitioners to approach the proper court for such reliefs as they are entitled and held that such observation would enable the plaintiff to file a suit challenging the validity of the order passed by this Court in C.R.P. No. 2308 of 1990. Consequently the learned Judge held that the suit was maintainable. The learned Judge further held that the newly elected members of the Administrative Council were in management and administration of the Sangam and, therefore, they were entitled to have an order of injunction as prayed for by them till the disposal of the suit.

15. The main question which arises for consideration is whether the suit which has been filed by the respondent herein is sustainable in law. The learned District Judge has understood the observation of the Supreme Court as giving liberty to the respondent to file a suit questioning the validity of the order of this Court in C.R.P. No. 2308 of 1990. That is clearly erroneous. The context in which the observation has been made should not be ignored. It should be remembered that the members of the Administrative Council were represented by their President and another member who filed on SLP which was dismissed on 24.10.1990. The Secretary of the Sangam filed another SLP which was numbered as SLP "13773 of 1990 and dismissed on 24.10.1990 after a long hearing. The third SLP was filed by the plaintiff himself along with the Secretary Dhanraj and that was dismissed on 10.12.1990. The fourth SLP filed by another member of the Administrative council along with some other members was also dismissed on 10.12.1990. Hence, in the context of dismissal of four S.L.Ps. confirming the order passed by this Court, can it be said that the Supreme Court passed a self-stultifying order and permitted the plaintiff to challenge the order of this Court which has been confirmed by the Supreme Court, not once, but four times? But, it will be absolutely improper to contend that the Supreme Court gave liberty to the institution of a vexatious litigation challenging the order of the High Court after confirming it. Hence, the interpretation placed by the learned I Additional District Judge on the observation of the Supreme Court in the order dated 10.12.1990 is wholly unsustainable.

16. In the context, the observation could only mean that if the parties before the Supreme Court were entitled to any reliefs in law which were not covered by the order of this Court as confirmed by the Supreme Court referred to above, such reliefs could be obtained by the said party by approaching the appropriate court. The observation does not enable the plaintiff herein to file a suit questioning the said order by raising the same grounds which were rejected by the Supreme Court.

17. It is stated in the plaint that the plaintiff was elected as Assistant Secretary of the Sangam, and that he has been effectively acting as such from 31.3.1990. It is also stated that Pon Subbiah was the President. Mr. Dhanraj is said to be the

Secretary. Thus, the office bearers viz., the President, Secretary and the Assistant Secretary representing the Sangam approached the Supreme Court in three S.L.Ps. and all of them were dismissed. Members who were not office bearers made an unsuccessful attempt. The orders of the Supreme Court are undoubtedly binding on all the members of the Administrative Council. Even though they were not parties to the C.R.P. co nomine, they had challenged the order before the Supreme Court by themselves and that challenge was thrown out by the Supreme Court. Moreover, the Sangam was a party to the C.R.P. before me. Hence, it is not open to any of the members of the Administrative Council to say that the order of this Court dated 9.10.1990 passed in the revision petitioner is not binding on them and they are not bound to hand over charge as directed in the order. Unfortunately, the I Additional District Judge has failed to consider this aspect of the matter.

18. The I Additional District Judge has placed reliance on a ruling in Tahera Sayeed Vs. M. Shanmugam and Others, . In that case it was held that a third party not bound by the decree could have his independent right, title or interest declared by approaching the Court before he is actually dispossessed from the property. It was held that he could file an application under O.21, R.97, of the CPC and such application should be treated as an intimation to the Court as caveat to the decree-holder or purchaser or a person claiming through him and the Court should treat it as a complaint or a counter in opposition to an application for the purpose of O.21, R.97, of the Code of Civil Procedure, and to adjudicate it under R.98, or R.101, of O.21, of the Code, which shall be final and conclusive between the parties. That ruling has no applicability whatever to the present case. In this case, I directed expressly and specifically that the 34 members who were elected to the Administrative Council should hand over charge to the persons mentioned in my order. That was an express direction to them straight. That direction was challenged by them in the Supreme Court and after that challenge has been repelled, it is not open to them to go to a Subordinate Court and raise the same contentions again.

19. Another ruling relied on by the lower Court is that of the Karnataka High Court in Kiunarappa v. B. Manjunath AIR 1991 Kar 73. In that case, the Supreme Court passed an order giving certain specific directions to the High Court, while dismissing the SLP. It was contended that the dismissal of the SLP meant that the order of the High Court was confirmed in entirety. The Division Bench of the Karnataka High Court pointed out that merely because the word "dismissed" was used in the order, it did not mean that the order of the High Court was confirmed in full. It was pointed out that the directions contained in the order of the Supreme Court should be looked into and they should be obeyed. When there were specific directions, it could not be assumed that the order of the Court was confirmed in entirety just because the formal expression "dismissed" was used by the Supreme Court in the end. The relevant passage in the judgment of the Karnataka High Court reads as follows:-

15. No doubt the Supreme Court dismissed the Civil Petitions. But the directions issued by the Supreme Court are general in nature and have the effect of modifying the decision of this Court on contention Nos. 5 in Ashok's case. As the said directions are quite opposed to the decision on contention No. 5 in Ashok's case the Supreme Court must be held to have modified the finding recorded by this Court on contention No. 5, as otherwise maintaining those findings, the directions of the nature issued by the Supreme Court could not have been issued. No doubt the Civil Petitions were dismissed but the dismissal followed the aforesaid directions. Therefore, it would only mean that the petitions were dismissed subject to the directions issued therein. Those directions have had the effect of modifying the decision of this Court on contention No. 5 recorded in Ashok's case. Therefore the contention of Mr. Nayak that the ratio of the decision in Ashok's case as to the manner of declaring the results of the elections pursuant to the decision has not been modified, because the civil petitions are dismissed, cannot be accepted. The words "dismissed" or "allowed" used in the order or judgment are not determinative of what is decided in the case. It is the content of what is decided in the case. It is the contents of the order or judgment and the findings recorded therein that are material in determining as to what is decided therein and as to what is the true effect and purport of the decision. Therefore, the entire order of the Supreme Court has to be read together. The dismissal of the Civil Petitions must be subject to the directions contained therein. Merely because in categorical terms the Supreme Court has not stated that the finding on contention No. 5 in Ashok's case is set aside or modified, it is not possible to hold that the finding recorded by this Court on that point contention No. 5 is affirmed by the Supreme Court, as long as the directions issued by the Supreme Court are not in conformity with the finding recorded on contention No. 5 in Ashok's case. Therefore, there is no escape from the conclusion that the Supreme Court must be held to have modified the finding on contention No. 5 and substituted it in terms of the direction issued by it.

There is no such direction in this case. What all the Supreme Court has observed is that it is open to the petitioners to approach the proper court for such reliefs as they are entitled. As pointed out already by me, if the petitioners before the Supreme Court were entitled in law to any relief which was not decided by the order passed by this Court as confirmed by the Supreme Court, then they were entitled to approach the appropriate court for obtaining such relief. That cannot be considered as a direction to this Court or the District court contrary to the findings rendered by this Court in C.R.P. No. 2308 of 1990 and the directions given therein to the members of the Administrative Council.

20. It has to be pointed out that the plaintiff attacked the validity of the order of this Court on the very same grounds as are now raised in the plaint. Before the Supreme Court, it was contended in the S.L.Ps. that the principles of natural justice were violated. It was argued that the orders of injunction passed by the various courts against the Commissioner restraining him from holding election were invalid in law and they had no effect at all. It was further contended that

there was a miscarriage of justice inasmuch as the plaintiff and other members of the Administrative Council were not given opportunity to be heard in the Civil Revision Petition. All these grounds were rejected by the Supreme Court in the S.L.Ps. 11 U not open to the plaintiff to raise the very same grounds again in the present suit and seek interim relief on that basis.

21. The lower Court also overlooked that an order of injunction cannot be granted under O.39, R.1 of the CPC against a lawful act, in this case, what is sought by the plaintiff is to prevent the enforcement of an order of this Court made in C.R.P. No. 2308 of 1990. Unless the plaintiff succeeds ultimately in the suit and gets a declaration that the order is a nullity, he is not entitled to have an order of injunction during the pendency of the suit restraining the enforcement of the order passed by this Court particularly after it has been confirmed by the Supreme Court. Hence, the order of the lower court is not sustainable on the face of it.

22. Just because the plaintiff and other members of the Administrative Council had been in management, they are not entitled to have an injunction and have the status quo continued. The I Additional District Judge has forgotten that my order was passed as early as on 9.10.1990 and the members of the Administrative Council were given time till 31.10.1990 to hand over the charge. Yet, they have been prolonging the matter and dragging it on till July 1991. The plaintiff cannot take advantage of its own wrong. Hence, on the question of balance of convenience also the plaintiff is not entitled to have an order of injunction. In the circumstances, the order of the I Additional District Judge is perverse and it is set aside. The Civil Miscellaneous Appeal is allowed and I.A. No. 73 of 1991 in O.S. No. 2 of 1991 on the file of the I Additional District Judge, Thirunelveli is dismissed with costs throughout. Counsel's fee in the appeal Rs. 1000/-.