

(2009) 04 MAD CK 0484

In the Madras High Court

Case No : C.R.P. (PD) MD. No's. 457 and 458 of 2009 and M.P. (MD) No. 1 of 2009

D. Vedanayagam

APPELLANT

Vs

Raja, Vedamanickam and Tirunelveli Diocese

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 18(1)
Limitation Act, 1963 — Section 21

Citation : (2009) 04 MAD CK 0484

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : P. Jayapaul, for the Appellant; M. Vallinayagam, for R.1 and R.2, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The civil revision petitioner/petitioner has filed the C.R.P.(PD)MD. No. 457 of 2009 as against the order dated 08.12.2008 in I.A. No. 1351 of 2008 in I.A. No. 630 of 2008 in O.S. No. 351 of 2008 passed by the learned Principal District Munsif, Tirunelveli, in dismissing the application filed by the petitioner under Order I Rule 10(2) and Section 151 of the Code of Civil Procedure, to implead him as the second respondent/second defendant in I.A. No. 630 of 2008 in O.S. No. 351 of 2008.

2. To avoid an avoidable delay, this Court dispenses with the issuance of notice to the third respondent in the interest of justice.

3. The petitioner/proposed defendant has filed the C.R.P.(PD)MD. No. 458 of 2009 as against the order dated 08.12.2008 in I.A. No. 1352 of 2008 in O.S. No. 351 of 2008 passed by the learned Principal District Munsif, Tirunelveli, in dismissing the application filed by the petitioner under Order I Rule 10(2) and

Section 151 of the Code of Civil Procedure, to implead him as the second defendant in O.S. No. 351 of 2008.

4. The trial Court while passing orders in I.A. Nos. 1351 of 2008 and 1352 of 2008, has inter alia opined that the petitioner is neither necessary party nor a proper party to the suit and resultantly, dismissed the said applications without costs.

5. Aggrieved against the orders so passed by the trial Court in I.A. Nos. 1351 of 2008 and 1352 of 2008, the civil revision petitioner has projected the two civil revision petitions before this Court.

6. The learned Counsel for the revision petitioner contends that the revision petitioner has filed I.A. No. 1352 of 2008 to implead him as the second defendant in the suit and also filed I.A. No. 1351 of 2008 to implead him as a party in the injunction application in I.A. No. 630 of 2008 in O.S. No. 351 of 2008, whereby the respondents 1 and 2 sought to stall the appointments and transfers of teaching and non-teaching staffs of the educational institutions of Diocese and that the petitioner has been elected as a member of the Diocese of Tirunelveli and that he is the Secretary of the Standing Committee on higher education of the Diocesan institutions which deal with the appointments and transfers of teaching and non-teaching staffs, but the trial Court has passed a non-speaking order without application of mind and that the trial Court has not taken note of the fact that no election has been set aside and that the persons elected have been competent to represent their interest and that since the revision petitioner is an aggrieved individual, he is a necessary and proper party to the suit and therefore, he prays for allowing the present civil revision petitions to prevent aberration of justice.

7. The learned Counsel for the revision petitioner submits that the petitioner is an elected office bearer and that he is a necessary party both in injunction application as well as in the suit and if an injunction order is passed, then certainly it will affect him in the administration and in support of his contention, he relies on the decision of the Honourable Supreme Court in Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, , wherein it is held as follows:

84. On 11th October, 2004, we had, after hearing the counsel for the parties observed that if a situation arises this Court would go into the validity of the election of the office-bearers of the Board held in the meeting dated 29th September, 2004, but, as indicated hereinbefore, we did so under a mistaken belief that the Board would be represented by the new office-bearers and, thus, all parties would be before us. However, it now stands admitted that the office-bearers either in their personal capacity or official capacity are not before us. They may have notice of the pendency of this proceeding. They may be sitting on the fence and watching the proceedings of this Court. But, unless they are made parties in these proceedings, we would not be in a position to entertain the

dispute as regard validity of the meeting of 29th September, 2004 resulting in the election of the office-bearers. Giving an opportunity of hearing to the elected members in a dispute of this nature is imperative and not a matter of mere procedure, formality or technicality. The election dispute, therefore, must be adjudicated upon by a proper forum.

8. He also cites the decision of this Court in P.R. Nallathambi Goundan Vs. Vijaya Raghavan and Others, at page 35, wherein it is among other things observed that "... Order I Rule 8, C.P. Code specially enables a party so represented, if he so desires to come on record. It would be a travesty of justice to hold that a party who is bound by the result of a litigation, though not eo nomine a party to the litigation, shall be denied an opportunity to draw the attention of the Court to some step, which seeks to prejudice his interests behind his back. In all such cases, it is the plain duty of the court to implead the parties concerned either under Order I, Rule 10, or in exercise of its undoubted, inherent power u/s 151, C.P. Code."

9. Further, the learned Counsel for the revision petitioner presses into service the decision of this Court in S. Krishnan Vs. Rathinavel Naicker and Others, , wherein it is held thus:

15. A party can also be impleaded when the relief prayed for in the proceedings is sought to be made binding on him or when it is felt that he would be adversely affected by the ultimate outcome of the proceedings. But in this case no relief is sought against the proposed respondents and the relief prayed for is also not intended to be made binding on them. It is not even the case of the 1st respondent that the outcome of the proceedings would adversely affect the interests of the proposed respondents.

Further, in paragraph No. 17, at page 77, it is observed as follows:

17. In a nut shell, the tests to be applied for determining the right of a party to implead another, in a pending Suit or other proceeding, may be crystallized into the following categories:

- (a) If without his presence no effective and complete adjudication could be made;
- (b) If his presence is necessary for a complete and effectual adjudication of the dispute though no relief is claimed against him;
- (c) If there is a cause of action against him;
- (d) If the relief sought in the Suit or other proceedings is likely to be made binding on him;
- (e) If the ultimate outcome of the proceedings is likely affect him adversely;
- (f) If his role is really that of a necessary witness but is sought to be camouflaged as a Necessary party;

If a party to a litigation satisfies the Court that the person sought to be

impleaded, passes any one or more of the above tests, then he is entitled to get the discretion of the Court exercised in his favour. The above tests are not exhaustive and at times, even if a person falls under any one of the above categories, the Court may refuse to implead him. To quote an example, a subsequent purchaser of a property, which forms the subject matter of the Suit, may satisfy the tests (d) and (e) above mentioned and yet the Court may decline to implead him on the basis of the doctrine of *lis pendens*. Therefore the above list is only a broad statement of the principles that could be culled out from judicial precedents.

10. He also brings it to the notice of this Court the decision of the Honourable Supreme Court in *Shri V.J. Thomas Vs. Shri Pathrose Abraham and Others*, , wherein it is observed as follows:

14. A litigant may execute a decree which was obtained for the benefit of the people of the locality but if he intends to execute a decree which was obtained for his own benefit, those who would be affected thereby should ordinarily be made parties to the suit. Similarly, if a village pathway is the subject matter of the suit on the premise that it is the personal property of the plaintiff, those who use the said pathway or at least have lands adjacent thereto should ordinarily be impleaded as parties. In the latter case, like the present one, applying the legal principles, as noticed hereinbefore, we are of the opinion that a decree which has been obtained by suppression of fact or collusively would not be executable against those who were not parties to the suit.

11. Added further, the learned Counsel for the revision petitioner places reliance on the decision of this Court in *C. Shanmugham Vs. N. Radhakrishnan and Others*, , wherein it is held thus:

7. It is true that even without the petitioner, the suit could be entertained since the question to be decided in the suit is whether the Resolution dated 3.7.1998 is valid or not. On that date, the petitioner did not have any interest. It is only consequent to the vacancy that arose due to suspension of the plaintiff and a Resolution had to be passed on 6.7.98 whereby the present petitioner has been co-opted. It is therefore clear that the petitioner is a person who is interested in the result of the suit and who will also be affected by the decision. Eventhough, the suit could be decided without him, he being the affected person, is entitled to come on record.

12. He further invites the attention of this Court to the decision of this Court in *Tamil Nadu Electricity Board Vs. Krishnan A., Lineman Grade I*, , wherein it is *inter alia* held that "... The courts below, in my view, over-simplified the matter by observing that the plaintiff is seeking for a declaration of his rights. As could be seen from the plaintiff's averments, the specific case is that by virtue of the defective manner of implementation of the agreement entered into u/s 18(1) of the Industrial Disputes Act, juniors of the plaintiff have stolen a march over the plaintiff and derived undue benefits to the detriment of the plaintiff and that

being the position, if the relief has to be granted and in this case actually has been granted by the court below, necessarily the other parties, who were said to be nearly 42 in number as per the claim of the defendant/appellant projected even before the trial Court, will be seriously and adversely affected. Such parties are therefore necessary and proper parties to the proceedings before the Court. This is not a case where any validity of rule or a statutory provision is alone being challenged, in which case only an exception had been made that individual workers or employees or officers who may be affected need not necessarily be made parties, but in a case of the nature where no such claim was involved and the very claim is competing claim of seniority and rights, based on such claim of seniority, inter se between various workers the other workers, who, according to the plaintiff, have undeservedly stolen a march over the plaintiff in the matter of seniority and further promotions, ought to have been necessarily made parties to the suit and their absence renders the suit itself bad for non-joinder of necessary parties. On this ground also, the suit ought to have been dismissed."

13. The learned Counsel for the revision petitioner draws the attention of this Court to the decision of the Honourable Supreme Court in Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, , wherein it is held as follows:

7. By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party-defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

8. The question is whether the person who has got his interest in the property declared by an independent decree but not a party to the agreement of sale, is a necessary and proper party to effectually and completely adjudicate upon and settle all the questions involved in the suit. The question before the court in a suit for the specific performance is whether the vendor had executed the document and whether the conditions prescribed in the provisions of the Specific Relief Act have been complied with for granting the relief of specific performance.

14. Yet another decision of this Court in Kaliammal Vs. Karuppan and 2 others, , is relied on by the learned Counsel for the revision petitioner wherein it is laid down as under:

20. The object of Order 1, Rule 10(2), C.P.C is to bring about before the court at the same time all the persons who are parties to dispute relating to the subject-matter so that the dispute may be determined at the same time without any

delay or inconvenience and expenses of separate actions and trials. By reason of such a power, the court places itself in a position of being able to effectually and completely adjudicate upon and settle all the questions involved in the suit. However, this provision is subject to the other provisions including Section 21 of the Limitation Act.

15. He also cites the decision of this Court in *K. Raghupathy v. K.R. Panneerselvam* reported in 2008 (4) TLNJ 215 (Civil) wherein it is held that "necessary parties are persons necessary to constitution of suit without whom decree can not be passed and there must be a right to some relief against in respect of matter involved in the suit."

16. He further relies on the decision of this Court in *V. Ravi @ P.V. Ravi v. V. Balakrishnan and 10 Ors.* reported in 2009(1) CTC 411 wherein it is observed that "... It is well settled principles of law that Court has wide co-extensive power to implead any person at any stage of Suit as necessary party to enable Court to effectively adjudicate questions involved in Suit and for exercise of such power, Court has to come to a finding that a party is a necessary party and party should not to be added as defendants merely because they will be affected by orders of Court incidentally and proper question to be addressed by Court is whether right of persons may be affected if they are not arrayed as parties and only reason which makes him a necessary party to an action is that he should be bound by result of action and question to be settled must be question which cannot be effectively and completely settled unless he is a party to case."

17. The learned Counsel for the revision petitioner relies on the order of this Court dated 18.08.2008 in C.R.P. (PD) Nos. 2527 to 2529 of 2008 and C.R.P (PD) Nos. 2601 of 2602 of 2008 [in which the third respondent (in C.R.P (PD) MD. Nos. 457 and 458 of 2009) has figured as the revision petitioner in C.R.P (PD) Nos. 2527 to 2529 of 2008] wherein at paragraphs 13 and 14, it is observed as follows:

13. Mr. R. Krishnamurthy, learned Senior Counsel, appearing for Mr. N.S. Nanda Kumar for the revision petitioners in CRP (PD) Nos. 2601 and 2602 of 2008, submitted that the Civil Revision Petitions filed under Article 227 of the Constitution of India are legally maintainable, since they are aggrieved persons of the impugned orders, but were not made as parties, though the respondents/plaintiffs have raised specific allegations against them in the plaint, however, without impleading them as parties to the suit, behind their back the respondents/plaintiffs have obtained the impugned orders against the revision petitioners herein, by adopting method of forum shopping, which is a clear abuse of process of court and therefore, the Civil Revision Petitions filed by the aforesaid petitioners, invoking Article 227 of the Constitution of India is legally maintainable. The learned Senior Counsel contended that the impugned orders have been passed without jurisdiction by the court below and without impleading necessary parties, hence, the revision petitions in C.R.P (PD) Nos. 2601 and 2602 of 2008 have been preferred. It was further contended that the revision

petitions have independent rights and they do not claim any right through the other revision petitioner, namely the Diocese of Tirunelveli (CSI) represented by its Bishop, the second respondent herein and second defendant in the suit.

14. According to the learned Senior Counsel, by the earlier order, dated 30.04.2008 made in I.A. No. 6990 of 2008, the court below had directed both the parties to the suit to maintain status quo and therefore, factually, there was no grievance for the revision petitioners, since the revision petitioners have been elected and holding their respective posts, though they were not impleaded as necessary parties. However, without any basis, the court below has exceeded its jurisdiction and passed the impugned order, dated 21.07.2008 in I.A. No. 9666 of 2008 against law and adverse to the rights and interest of the revision petitioners, by directing the parties to maintain status quo ante prior to 21.12.2007 and that the order has been passed, even without impleading necessary parties, namely the revision petitioners in C.R.P. (PD) Nos. 2601 and 2602 of 2008. Only after knowing the adverse order passed against them, they preferred the revision petitions, after obtaining leave from this Court. According to the learned Senior Counsel, the only remedy available for the petitioners is filing the revision petitions by invoking Article 227 of the Constitution of India. It was further contended by the learned Senior Counsel that the respondents/plaintiffs have raised specific allegations against the revision petitioners in their plaint itself at paragraph number 12, however, they were not arrayed as respondents/defendants in the suit. Suppressing the material facts, that there are similar suits filed and pending before various courts in Tirunelveli District and without impleading the necessary parties, by merely impleading the first respondent at Chennai, who was nothing to do with the election dispute filed the suit in the City Civil Court, Chennai and have obtained the impugned orders from the court below, which has no jurisdiction.

Further, he also places reliance on the observation made in paragraph No. 45 of the aforesaid order passed in the above Civil Revision Petitions which runs thus:

45. There is deliberate suppression of material facts by the respondents/plaintiffs, apart from forum shopping and a total contradictory plea for the alleged cause of action to file the suit, which leads to the inference of fraud being played on the court below by the respondents/plaintiffs. The impugned orders have been passed against the revision petitioners in C.R.P. Nos. 2601 and 2602 of 2008, though specific allegations were raised against them by the respondent/plaintiffs in the plaint, but, without impleading them as necessary parties, behind their back, hence, the order is affected by non-joinder of necessary parties. There are materials available to show forum shopping. In the light of the decisions referred to above, I am of the view that the aforesaid impugned orders passed by the court below in I.A. No. 6990 of 2008 and I.A. No. 9666 of 2008 are expacie illegal and without jurisdiction and fraud has been played on the part of the court below and therefore the affected parties can maintain the revision petition by invoking Article 227 of the Constitution of India, which is not legally

precluded on the facts and circumstances of this case. Therefore, the revision petitions in C.R.P. (PD) Nos. 2529, 2601 and 2602 of 2008 are allowed and the impugned order, dated 30.04.2008 and subsequent order dated 21.07.2008 passed in I.A. No. 9666 of 2008 granting status quo ante on the date prior to 21.12.2007 are set aside. I am of the considered view that Chapter IV Rule 3 of the Constitution of Diocese of Tirunelveli is not applicable on the facts and circumstances, directing the parties to maintain status quo, prior to 21.12.2007.

18. Per contra, the learned Counsel for the respondents 1 and 2, submits that the present suit in O.S. No. 351 of 2008 on the file of the learned Principal District Munsif, Tirunelveli, is not a suit questioning any election already held and that earlier, the plaintiff in O.S. No. 194 of 2007 on the file of the learned District Munsif Court, Nanguneri, has filed a suit in a representative capacity praying for the relief of declaration that elections held to the pastoral Committees, Church Councils and Diocesan Council of the first defendant Diocese held on 07.10.2007, 12.10.2007 and 20.10.2007 are null and void non-est and not binding on the members of the first defendant Diocese and for appointing a Commissioner / Election Committee to conduct fresh elections to the Pastorate Committee, Church Councils, Diocesan Council, Executive Committees, Sub-Committees, Office of Lay Secretary, Clerical Secretary and Vice Chairman of the first defendant Diocese and for permanent injunction restraining the defendants 1 to 3, their men or agents from conducting any elections including the election to the Executive Committee, Sub-Committee, Office of Lay Secretary, Vice Chairman and Clerical Secretary of the first defendant Diocese and for permanent injunction restraining the defendants 1 to 3, their men or agents from giving effect to new appointments of correspondents to St. John's College, Sarah Tucker College, St. John's Hr. Sec. School, Cathedral Hr. Section School, Florence Swainson Deaf and Dumb Hr. Section School, Sarah Tucker Teacher Training Institute of the first defendant Diocese and that in I.A. No. 739 of 2007 in O.S. No. 194 of 2007, on 30.11.2007, an order has been passed by the learned Additional District Munsif, Nanguneri, vacating the interim stay order dated 06.11.2007 and has issued the following directions:

1. There is no bar to conduct the next chain of election process which has to be completed and the elected representatives have to be sent to Synod as per the schedule by permitting the undisputed elected members (members from undisputed election of Pastorate Committees and Diocesan Council) to exercise their voting rights as per the provisions provided under the Constitution of Diocese of Tirunelveli in further elections. The respondents are directed to complete all the election process as early as possible.

2. In respect of the disputed election for the Pastorate Committees as well as for the Diocesan Council Member from Nanguneri, Parapadi, Donavour and other places and in respect of diocesan member elections disputes, the petitioner has to submit representations before the election tribunal of Diocese of Tirunelveli with all the relevant material evidence referred in the affidavit within one month

from the date of the order passed by this Court. The respondent should consider the representation of the petitioners within two weeks from the date of receipt of the representation and pass a speaking order based on the merits of the representation placed before it.

3. In respect of the alleged violations about the election of Diocesan workers in various places, the petitioner should raise their dispute before the election tribunal of the Diocese within one month from the date of this order and the election tribunal has to decide the violations after hearing all the concerned parties and pass a speaking order.

4. In respect of 6 newly appointed Correspondents and employees under the diocesan have not right to participate the present election process and they can cast their voting right if any for the election coming from the next turn.

5. The above such direction is not applicable to any case is pending any other courts in respect of election disputes.

and on the basis of this order, the further elections have been held and a third party has filed the C.R.P. No. 1764 of 2007 before this Court and the same has been allowed on 14.12.2007 setting aside the order passed by the learned Additional District Munsif, Nanguneri, in I.A. No. 739 of 2007 in O.S. No. 194 of 2007 dated 30.11.2007 and that any person claiming right that he has been elected by virtue of the order passed by the learned Additional District Munsif, Nanguneri, in I.A. No. 739 of 2007 in O.S. No. 194 of 2007 dated 30.11.2007 must go and hence, the respondents 1 and 2 (in C.R.P(PD)MD. Nos. 457 and 458 of 2009) have filed O.S. No. 351 of 2008 on the file of the learned District Munsif, Tirunelveli, praying for the relief of mandatory injunction directing the defendant and his men and agents to hold further chain of elections to the Church Councils, Diocesan Councils, recognizing the voting rights of the representative of the Pastorate Committee throughout the Diocese including Parapadi Pastorate as per the bye-law and for prohibitory permanent injunction restraining the defendant and his men and agents from appointing, transferring any Pastor in the Diocese, teaching and non-teaching staff in the educational institution including Parapadi Pastorate without properly forming the respective committees as per bye-law and that the revision petitioner claims that he has been elected in pursuance of the order passed in I.A. No. 739 of 2007 in O.S. No. 194 of 2007 dated 30.11.2007 and that he is not a necessary party in I.A. Nos. 1351 and 1352 of 2008 and that the trial Court has exercised its discretion in refusing to allow the said I.A. Nos. 1351 and 1352 of 2008 and that the order passed by the trial Court in I.A. Nos. 1351 and 1352 of 2008 are a reasoned one and that they need not be interfered with by this Court at this stage.

19. Continuing further, the learned Counsel for the respondents 1 and 2 submits that the respondents 1 and 2 herein are not parties in C.R.P. (PD) Nos. 2527 to 2529 of 2007. It is significant to make a mention that the civil revision petitioner in C.R.P (PD) MD. Nos. 457 and 458 of 2009 has figured as the fourth petitioner

in C.R.P. (PD) Nos. 2601 and 2602 of 2008.

20. Moreover, the learned Counsel for the respondents 1 and 2 brings it to the notice of this Court that in I.A. No. 629 of 2008 (filed under Order I Rule 8 of the Code of Civil Procedure), in O.S. No. 351 of 2008, the Bishop has been permitted to represent all the members of the Diocese.

21. The learned Counsel for the respondents 1 and 2, relies on the decision of this Court in A. Shanmuga Sundara Pandia Nadar and Anr. v. P.S.R. Vivekanandan and Ors. reported in 1991 (1) MLJ 105, at page 110, wherein it is inter alia observed as follows:

14. Learned Counsel for the third respondent raised a preliminary objection as to the maintainability of the application in the court below as well as this revision petition in this Court. According to the learned Counsel for the third respondent, the application in the court below was vitiated by non-joinder of necessary parties, viz., the Commissioner and the newly elected members of the Administrative Council. According to him, the application before the court below to declare the election as null and void was akin to an election petition under the Representation of People Act, the Panchayats Act or the District Municipalities Act and without impleading the successful candidates, the petition was wholly unsustainable. It was argued that the impleading of the Commissioner as a party to the Revision Petition would not improve the situation and the non-joinder of the successful candidates in the revision petition would be sufficient to dismiss the same as not maintainable. On the merits, learned Counsel for the third respondent contended that the Commissioner was entitled to ignore the order of injunction granted by Sub Court, Madurai as it was null and void. According to him, the election was being held in pursuance of the terms of the compromise decree and in accordance with the directions given by the Sub Court, Tirunelveli, and no member of the Sangam was entitled to approach any other Court for injunction and the entire proceeding was mala fide and an abuse of process of Court. He has also stated that the proceedings in the other courts were really engineered by the petitioners herein, who are keen on clinging on to the office as long as possible. Learned Counsel for the third respondent also submitted that the Commissioner was right in rejecting the claim made by the 278 members as trader members. Thus, learned Counsel contended that the order of the court below is unassailable in having accepted the contention put forward by the respondents.

22. He also cites the decision in Tansukhlal and 4 Ors. v. Smt. Vinita and 8 Ors. reported in 2000(II) CLT 27 wherein it is held that "the trial Court should be left with discretion to come to conclusion as to which is necessary party to be impleaded in suit for finding out truth for adjudication of issues in controversy, without eclipsing its jurisdiction on anticipation of averments and by addition of parties not compulsively necessary, there is possibility of widening of dimensions of issues in controversy which may give rise to the multiplication of issues to be adjudicated."

23. Another decision of this Court in Antony Devaraj and Another Vs. Aralvaimozhi (Kurusadi) Devasahayam Mount Oor and Thuya Viagula and Others, is relied on the side of the respondents 1 and 2, wherein the guidelines in regard to the application of Order 1, Rule 10(2) of the CPC have been summarized as follows:

(a) Plaintiff may choose to implead only persons against whom he wishes to proceed with and Court may add any other party if such party is necessary party to enable Court to effectually and completely adjudicate questions involved in suit; (b) Necessary party is one without whom no order can be effectively made and proper party is one whose presence is necessary for complete and final decision of question involved in proceedings; (c) Person to be added as party must be one whose presence is necessary as party and he had relevant evidence to give on some questions involved and he becomes necessary witness; (d) Third party cannot be considered necessary party for deciding main issue framed in suit; (e) Court can suo moto in fit case implead new party as defendant but Court cannot implead person who is neither necessary nor proper party; (f) If question in issue between parties can be worked out without anyone else being brought in strangers should not be added as party; (g) Plaintiff is dominus litis and he is best Judge of his own interest and it should be left to him to choose his opponents; (h) Person need not be added merely because he or she would be incidentally affected by judgment; (i) Persons whose interest would be affected by litigation or entitled to come on record to protect their interest when such interest are jeopardized by person already on record and persons who sought to be impleaded in their capacity as former office bearers cannot sustain their application as suit already filed is representative proceedings and in interest of Oor committee and Village.

24. Further, the learned Counsel for the respondents 1 and 2 also cites the decision of the Honourable Supreme Court in Binayak Swain v. Ramesh Chandra Panigrahi and Anr. reported in 1996(3) SCR 24 wherein it is laid down thus:

The principle of the doctrine of restitution is that on the reversal of a decree the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. The Court in making restitution is bound to restore the parties so far as they can be restored to the same position they were in at the time when the Court by its erroneous action had displaced them from.

25. He further presses into service the decision of this Court in All India Anna Dravida Munnetra Kazhagam v. State Election Commissioner reported in 2007(1) CTC 705 at page 837, wherein at paragraph No. 252, it is held as follows:

252. A submission was made on behalf of the respondents that in the absence of all the candidates, and particularly the successful candidates, such election could not have been set aside in respect of all the wards. The decision of the Supreme Court in Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and

Others, , has been relied upon in support of the contention that in the absence of elected representatives, no such dispute should be decided.

In my considered and humble opinion, the ratio of the said decision may not be applicable to the peculiar facts situation of the present case. All the Writ Petitions had been filed as public interest litigations. It is of course true that five of the Writ Petitions were filed by the political parties whose candidates were contesting in the election. However, other petitions had been filed either by the candidates or even citizens who cherish democratic value. A free and fair election has been held to be a basic principle of democracy and democracy is considered to be a basic structure of the Constitution. The purport of the petitions was to ensure free and fair poll. The duty was upon the Election Commission and other officials to ensure such free and fair poll. Such officials were before the Court. All the Writ Petitions had been filed at a stage when results were yet to be announced. These public interest litigations cannot be equated with Election Petitions under the statutory provisions, which require that all candidates should be impleaded. At the time when the petitions were filed Counting had not begun. Subsequently when counting was permitted to be undertaken, it was specifically indicated that declaration of results would be subject to the decision in the Writ Petitions. In fact under a specific direction of this Court, in the certificates in favour of the successful candidates, it has been so indicated. Therefore, all the successful candidates knew that their election as Councillors was in peril being subject to the result of the Writ Petitions. Keeping in view the peculiar nature of the case and the main purpose of filing the public interest litigations which was to ensure free and fair election, it cannot be said that in the absence of the candidates or even the successful candidates, the Writ Petitions were hit by the principle of non-joinder of necessary parties.

26. At this stage, the learned Counsel for the revision petitioner contends that the relief sought for in the suit in O.S. No. 351 of 2008 on the file of the learned District Munsif, Tirunelveli, by the respondents 1 and 2/plaintiffs is likely to be made binding on the revision petitioner and that the ultimate outcome of the suit proceedings will likely affect the revision petitioner and therefore, he is not only a proper but also a necessary party to the suit in O.S. No. 351 of 2008 as well as in the injunction application in I.A. No. 630 of 2008 in O.S. No. 351 of 2008 and therefore, the civil revision petition has to be allowed in furtherance of substantial cause of justice.

27. It is to be borne in mind that where complete and effective relief can be obtained by a litigant, then it is not necessary to join any other party, in the considered opinion of this Court. It is needless to say that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence, an effective order can be made, but whose presence is necessary for complete and final decision of the question involved in the proceeding.

28. In reality, the respondents 1 and 2/plaintiffs being the dominant lite cannot

be directed to implead the persons against whom no relief is sought for in the suit.

29. As far as the present case is concerned, since the order issuing directions in I.A. No. 739 of 2007 in O.S. No. 194 of 2007 dated 30.11.2007, passed by the learned Additional District Munsif, Nanguneri, has been set aside by this Court in C.R.P. No. 1764 of 2007 dated 14.12.2007, the subsequent election which has been conducted is only a non-est in the eye of law and (as a matter of prudence, one cannot brush aside an important fact that the revision petitioner claims only to have been elected in pursuance of the order in I.A. No. 739 of 2007 in O.S. No. 194 of 2007) and that the parties are relegated to original position as on the date of filing of the suit in O.S. No. 194 of 2007 and inasmuch as I.A. No. 629 of 2008 in O.S. No. 351 of 2008 filed under Order 1 Rule 8 of the CPC has been allowed by the trial court whereby, the Bishop has been permitted to represent all the members of the Diocese, this Court is of the considered view that the revision petitioner is not a proper and necessary party and moreover, the revision petitioner cannot be added as a party merely because he will be affected by the judgment or orders of the Court incidentally and indeed, the revision petitioner has no enforceable legal right and that even in the absence of the revision petitioner, the trial Court can effectively adjudicate upon the controversies/ disputes involved in the suit and in that view of the matter, the exercise of judicial discretion by the trial Court in refusing to allow the said I.A. Nos. 1351 and 1352 of 2008 cannot be found fault with and consequently, the present Civil Revision Petitions fail and the same are hereby dismissed leaving the parties to bear their own costs. Resultantly, the connected Miscellaneous Petition is closed.