

(1992) 06 MAD CK 0025

In the Madras High Court

Case No : CRP. No. 3372 of 1991 and CRP No. 1306 of 1992

Madurai Therkuvassal Nadar Vidyasalai Managing Board and
three others

APPELLANT

Vs

Madurai Therkuvasal Nadar Vidyabhirithi Sangam and four
others
Madurai Therkuvasal Nadar Vidyasalai Managing
Board and two others Vs Madurai Therkuvasal Nadar
Vidyabhivithi Sangam and three others

RESPONDENT

Date of Decision : 24-06-1992

Acts Referred:

Citation : (1992) 06 MAD CK 0025

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : M.R. Narayanaswami, for Mr. K. Sampath, for the Appellant; T.R. Mani for Mr. T.M. Hariharan, for the Respondent

Judgement

Srinivasan, J.—These two revisions are filed by Madurai Therkuvasal Nadar Vidyasalai Managing Board and three others (hereinafter referred to as petitioners for the sake of convenience). The contesting respondents are Madurai Therkuvasal Nadar Vidyabhavathi Sangam Uravinmurai (hereinafter referred to as respondents for convenience). It is not necessary to refer to the other persons in the cause title. The respondents filed O.vs.753/88 on the file of the Principal Sub Court, Madurai for a declaration that the plaintiff's Sangam is the Supreme body having power to manage the affairs of the Nadars of Therkuvasal area and to nominate members to the Madurai Therkuvasal Nadar Vidyasalai Managing Board and to manage all the properties inclusive of the Nadar Vidyasalai School and for a declaration that the resolution passed by defendants 1 to 4 on 5.1.1985 was without jurisdiction, null and void and not binding on the plaintiff's Sangam. As consequential declaration, the plaintiff's prayed for a permanent injunction restraining the defendants from, in any way, changing the 23 members nominated and approved on 30.6.88 or removing or adding members to the Madurai Therkuvasal Nadar Vidyasalai Managing Board and the Nadar

Vidyasalai School Committee or forming any way new body under any name whatsoever or in any way acting independently against the interest of the School Committee represented by defendants 6 and 7 and the first plaintiffs" Sangam. Pending the suit, the plaintiff's prayed for an injunction restraining the defendants from making any unauthorised resolutions or functioning, in any way, independently without the concurrence of the plaintiff's Sangam and either to nominate or to delete any members to the Madurai Therkuvasal Nadar Vidyasalai Managing Board or to the School Committee or to form new Sangam under any name and style whatsoever or in any way, acting against the interest of the petitioners Sangam (Uravinmurai) and the School Committee. The Principal Sub Judge granted an injunction in I favour of the plaintiff's in I.A. 571 of 1988 on 4.5.1990 as prayed for by them.

2. The petitioners filed O.S.No.763/90 on the file of the Sub Court, Madurai on 20.8.90 for a declaration that resolutions regarding agendas Nos. 4 and 6 said to have been passed in the meeting dated 12.8.1990 by the defendants arietta vires, illegal and void and for consequential permanent injunction restraining the defendants from doing any act in furtherance of such resolutions and from interfering with the affairs and functioning of the plaintiff's Society. They also filed I.A.No.360 of 1990 for an interim injunction till the final disposal of the suit. The Second Additional Sub Judge, Madurai, granted interim injunction as prayed for by them after hearing both parties.

3. It is not necessary to go into the details of the allegations made in the two complaints or in the written statements filed by the parties. Suffice it to say that the respondents are claiming to be the parent Society established in 1850 and registered in 1987. The petitioners were constituted a Society which came into existence in 1920 and it was registered in 1946. Thus the petitioners Society is a registered body from 1946, while the respondents Society got it registered in 1987. According to the respondents, their Society is the parent body and the members of the petitioners Society should be elected by respondents Society from the general body of the respondents Society. According to the respondents, matters were being smoothly carried on till disputes arose between the parties in 1987 alleging that the cause of action arose in 1988 when some of the members of the petitioners Society tried to get a new Society formed and change the name of the Society besides sending out certain members of the Society.

4. It is seen that the cause of action paragraph has also referred to a notice issued to defendants 1 to 3, on 7.9.87 for convening a meeting. Hence the respondents should have been aware of the attempts being made by the petitioners even in September 1987 to have a separate Society. But the records produced before the court disclosed that even in September 1986 the petitioner Society had registered amendments to the by-laws of the Society. The Registrar of Societies had registered it on 30.9.1986.

5. Before the amendment, the bye-laws providing for election of 22 members from the general body of the respondents Society to the petitioners Society.

There was also consequential Rules provided for a complete control by the respondents Society over the affairs of the petitioners Society. By-laws 3-A to 3-H, 19 and 35 are referred to at the instance of the respondents counsel.

6. It is seen from Ex.B.1 that by-laws 3-A and 3-B have been amended and 3-C, 3-D and 3-E were deleted. Similar consequential amendments are made by deleting some other by-laws and amending some other by-laws. It is not necessary to go into the details of them. It is clear from the amended by-laws that the respondents Society is no longer having any control over the petitioners Society with regard to either election of members or even its functioning. Of course, the respondents are questioning the validity of the amendment of the by-laws. According to the respondents, it is only the parent body which by election of members from its own general body contribute to the very existence of the petitioners body and the latter cannot act independently to have the by-laws amended. Whatever it may be, such contentions can be gone into only at the time of final disposal of the suit. The various questions raised by the respondents have to be decided only in the suit.

7. Against the order of the Principal Sub Judge, Madurai, granting interim injunction in favour of the respondents in I.A.571/88, the petitioners filed C.M.A. No.66/90 on the file of the, Additional District Judge, Madurai. Against the other order passed by the Second Additional Sub Judge, the respondents filed C.M.A.No.96/90 on the file of the Additional District Judge, Madurai. Both the appeals were heard by the Additional District Judge and disposed of by a common order dated 27.3.1991. The Additional District Judge has taken a view that the respondents are the parent body and unless the respondents elects members to the petitioners Society, the latter cannot have any existence. The Additional District Judge has placed reliance on the by-laws as they stood and are found in Ex.A.4. He specifically refers by-law No.3-D, I have already pointed out that the said by-law has been deleted by the amendment made in September, 1986. It should not be forgotten that the petitioners Society was registered in 1946 and is legally in existence since then. The respondents Society has been registered only in 1987, However, the respondents claim that they are a Society having complete control over the petitioners Society is a matter to be decided only in the suit and not the interlocutory stage. At any rate, the Additional District Judge is clearly in error in placing reliance to the by-laws as found in. Ex.B.1.

8. There is one other circumstance, which will go against the respondents. Even in the plaint in 03.753/88, it is stated in paragraph 7 that the plaintiffs' Sangam (Uravinmurai) has approved the Nadar Vidyasalai Managing Board elected on 30.6.88 to continue in management of the affairs of the schools for a period of 3 years. That approval has come into existence long after the amendment of the by-laws in September, 1986. Thereafter, the suit has been filed only on 5.10.88, When even according to the plaintiffs, they have approved the managing board for a period of 3 years, it is not known how the plaintiff is entitled to file a suit

and seek an injunction in 1988 itself. It is now argued that the plaintiffs' Society was not aware of the amendments made to the by-laws or the hostile attitude taken by some of the members of the petitioners Society. That cannot be accepted, in view of the fact that in the cause of action paragraph, the plaintiff's have expressly referred to the notice issued by defendants 1 to 3 on 7.9.1987, which would certainly have put them on notice as to the actions of the petitioners' Society.

9. There is no acceptable explanation to how the respondents' Society itself approved the managing body in June, 1988 even after the bylaws were amended at the instance of the petitioners' Society. On the facts and circumstances of the case the respondents are not entitled to an order of injunction as against the petitioners at the interlocutory stage. The petitioners Society has been in management of the schools and have been functioning as Managing Board for quite a long time. They cannot be thrown out by an interlocutory order, particularly, when questions of law as to the petitioners Society can exist independent of the respondents Society have to be decided only in the suit. Prima facie, the petitioner Society is a registered Body and has been functioning from 1946 and the balance of convenience is entirely in favour of the petitioners. The court below is, therefore, in error in restraining the petitioners from functioning and managing the schools. The order of injunction granted by the Additional District Judge in I.A.No.571 of 1988 is set aside. I.A.360 of 1990 is allowed. Both the Civil Revision Petitions are allowed and I. A.571/88 is dismissed. There will be no order as to costs.