

(2014) 06 MAD CK 0016

In the Madras High Court

Case No : C.R.P. (PD)(MD) Nos. 53 & 418 of 2014 & M.P. (MP) Nos. 1, 1 to 3 of 2014

P. Binekas Selvakumar Gnanaraj

APPELLANT

Vs

Tirunelveli Diocesan Trust Association

RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Citation : (2015) 1 MadWN(Civil) 782

Hon'ble Judges : T. Mathivanan, J.

Bench : Single Bench

Advocate : S. Subbiah, Advocate, for the Petitioner in C.R.P. No. 53 of 2014; G. Prabhu Rajadurai, Advocate, for the Petitioner in C.R.P. No. 418 of 2014; S. Meenakshi Sundaram, Advocate, for the Respondent in C.R.P. No. 53 of 2014; S. Meenakshi Sundaram, Advocate, for the Respondent No. 4 in both C.R.P. No. 418 of 2014; V. Lakshmi Narayanan for T.R. Jeyapalam, Advocates, for the Respondent No. to 3 in C.R.P. No. 418 of 2014; T. Lajapathi Roy, Advocate, for the Respondent Nos. 5 & 6 in C.R.P. No. 418 of 2014

Final Decision : Dismissed

Judgement

T. Mathivanan, J.—The Memorandum of Civil Revision Petition in C.R.P. 53 of 2014 has been directed against the fair and decretal Order dated 16.12.2013 and made in I.A. No.560 of 2013 in I.A. No.298 of 2013 in I.A. No.292 of 2012 in O.S. No.128 of 2011 on the file of the learned Additional Subordinate Judge, Tirunelveli.

2. The Memorandum of Civil Revision Petition in C.R.P. No.418 of 2014 has been directed against the fair and Decretal Order dated 16.4.2012 and made in I.A. No.43 of 2014 in I.A. No. 298 of 2013 in O.S. No. 128 of 2011 on the file of the learned Additional Subordinate Judge, Tirunelveli.

3. The parties in both the Civil Revision Petitions are one and the same. The applications in I.A. Nos. 43 of 2014 & 560 of 2013 have been arisen out of the same Suit in O.S. No. 128 of 2011, in which excepting the Petitioner Ounasmgli

Chelladurai in I.A. No. 43 of 2014 as well as in CRP No. 418 of 2014, the other parties are one and the same. On account of this reason, both the Revision Petitions have been consolidated together, heard jointly and disposed of in this common Order.

4. It is manifest from the records that the Revision Petitioners 1 to 3 in C.R.P. 53 of 2014 appear to have filed a Suit in O.S. No.128 of 2011 on the tile of the learned Additional Subordinate Judge, Tirunelveli against the Respondents 1 to 3 herein (C.R.P. No.53 of 2014), seeking the following reliefs:

(a) For a declaration that the Election Schedule declared by the Thud Defendant (R-3) is null and void and consequential Permanent Injunction restraining the Second and Third Defendants (R-2 & R-3) from conducting the elections for the I Phase to IV Phase elections commencing from 24.7.2011 to 29.9.2011 & 30.9.2011 and also for the T.D.T A. Committee of Management in any manner;

(b) Alternatively, if the Court feels that the Plaintiffs are not entitled to such relief as prayed above, a Committee consisting of minimum three members may be appointed to supervise and to conduct the above elections under the supervision of the Court, according to the Constitution of Tirunelveli Diocese and also for costs.

5. During the pendency of the Suit, the Revision Petitioners/Plaintiffs have also filed an Application in I.A. No.205 of 2011 under Section 151 of the Code of Civil Procedure, as against the Respondents herein (CRP No.53 of 2014), seeking the relief of appointment of a Commissioner to conduct the election of the Diocese. That Petition was allowed and in consequence thereof a Commissioner was also appointed.

6. In the meanwhile, an another Petition in I.A. No.272 of 2011 was also filed by the Petitioners to appoint an another Commissioner to supervise the election of the Diocese and the Council. That Petition was also allowed and the Commissioner, who was appointed in pursuant to the Order passed in that Application, had also filed his report on 13.9.2011.

7. Under this circumstance, the Revision Petitioners herein, being the Plaintiffs, have taken out another Application in I.A. No.292 of 2011 seeking the relief of re-counting the Three Church Council votes viz., South-West Council votes, North-West Council votes and West Council votes that Petition was resisted by the Respondents.

8. After hearing both sides, the learned Additional Subordinate Judge, Tirunelveli had proceeded to allow that Application in respect of North-West Council votes and West Council votes, barring the South-West Council votes.

9. As it appear from the Order of the learned Additional Subordinate Judge, Tirunelveli, dated 20.4.2012 that Order was re-opened so as to enable the parties to the Petition to advance their respective arguments in respect of South-West Council votes Accordingly, the learned Additional Subordinate Judge,

Tirunelveli had passed an Order on 20.4.2012 for re-counting of the votes, including South-West Council votes.

10. In the meanwhile, the Revision Petitioners/Plaintiffs have filed an Application in I.A. No. 298 of 2013 on 17.6.2013 as against the Respondents herein (CRP No.53 of 2014) to record their objection and to set aside the Report of the Commissioner dated 21.3.2013 among other reliefs as appeared in the Petition in I.A. No.298 of 2013. that Petition was also resisted by the Respondents by filing their Counter Statements and thereafter, on 3.12.2013, the Revision. Petitioners/Plaintiffs have filed another Application in I.A. No.560 of 2013 as against the Respondents to permit them to examine the Court Commissioner as witness on their side in respect of the Commissioner's Report dated 21.3.2013. this Petition was also vehemently resisted by the Respondents.

11. After hearing both sides, the Petition in I.A. No. 560 of 2013 was dismissed by the learned Additional Subordinate Judge, Tirunelveli, on 16.12.2013 on the ground that the Petitioners/Plaintiffs can get the relief in then" fresh Suit in O.S. No. 143 of 2013 pending on the file of the learned Principal Subordinate Judge, Tirunelveli and further he has also found that the Commissioner was appointed to assist the Administrative Committee to conduct the elections in a fail manner and that it is learnt that the Commissioner had not prepared the Voters List and therefore, the examination of Commissioner, as a witness, for the irregularities committed in the Voters List is not necessary. He has also found that no necessity has arisen to examine the Commissioner in this case. Accordingly, I.A. No.560 of 2013 was dismissed.

12. Challenging the impugned Order dated 16.12.2013, the Memorandum of Civil Revision in CRP No.53 of 2014 has been filed by the Revision Petitioners/Plaintiffs.

13. In so far as the Revision Petitioner in C.R.P. No.418 of 2014 is concerned, he is totally a stranger to the Suit in O.S. No. 128 of 2011.

14. It is revealed from the records that the Revision Petitioner, being a stranger, has taken out an Application in I.A. No.43 of 2014 after invoking the provisions of Order 1, Rule 10(2) and Section 151 of the Code of Civil Procedure, to implead him as the proposed Fourth Respondent in I.A. No.298 of 2013 in the Suit in O.S. No. 128 of 2011.

15. It is pertinent to note here that he does not seek the relief for his impleadment in the Suit in O.S. No. 128 of 2011. Instead he has sought to be impleaded himself as the proposed Fourth Respondent in I.A. No.298 of 2013 in O.S. No. 128 of 2011.

16. As afore stated, the Interlocutory Application in I.A. No.298 of 2013 has been filed by the Revision Petitioners in CRP No.53 of 2014, who are the Plaintiffs in the Suit, to record their objection and to set aside the Report of the Commissioner dated 21.3.2013 and to direct the Commissioner to prepare a fresh Voters List without violating the ratio of at least 1:2 to the clergy and non-

clergy as provided under the Constitution of the Church of South India and the provisions of the Constitution of the Diocese of Tirunelveli in consonance with the Constitution of the Church of South India by removing the names of Serial Nos.136 & 169 and Serial Nos.129, 244, 245, 255 & 279 in the existing Voters List and adding the names of Mr. Rev. Paul Jesudasan, Mr. Rev. Thiraviam Jesudasan, Mr. Rev. Thiagarajan and Mr. Rev. Packiaraj, who have been in active service on 8.3.2013, the date of preparing the Voters List, whose names are purposely omitted without valid reasons and those retired, if any, subsequently and further after getting the seal of approval of the list from the Court, a fresh election be ordered to be conducted on the basis of the Approved List of the Court by appointing a fresh Commissioner.

17. Though the Respondents, who are the Defendants in the Suit, have tiled their Counter Statements, their application is still pending. Only under this circumstance, the Revision Petitioner in CRP No. 418 of 2014 has taken out the above said Application in I.A. No.43 of 2014 to implead him as the proposed Fourth Respondent in the Application in I.A No. 298 of 2013. This Application was also strongly resisted by the Revision Petitioners in CRP No. 53 of 2014, being the Plaintiffs in the Suit in O.S. No. 128 of 2011.

18. On considering the averments of the Affidavit filed in support of that Petition as well as the Counter Statements filed by the Respondents therein/Plaintiffs, the learned Additional Subordinate Judge, Tirunelveli, has dismissed their Application on 16.4.2012 on the ground that without seeking impleadment in the Suit, seeking impleadment in the Interlocutory Application in I.A. No.298 of 2013 is absolutely against the settled principle of law and therefore, that Application was dismissed with costs of the Respondents 1 to 3/Plaintiffs, Impugning the said order, the Revision in CRP No.418 of 2014 has been filed by the Revision Petitioner, who is the third party in the Suit.

19. For the purpose of adjudicating these two Civil Revision Petitions, the entire facts of the case need not be traversed.

20. In so far as the Revision in CRP No. 53 of 2014 is concerned, the Revision Petitioners/Plaintiffs have sought for the relief of examining the Commissioner as a Witness on their part.

21. It appears from the records as well as from the Counter Statements filed by the Respondents 1 to 3 therein, that the Commissioner is not responsible for the preparation of the Voters List, and that it appears that the Administrative Committee appointed by the SYNOD was responsible for preparing the Voters List and further the Petitioners/Plaintiffs have filed a fresh Suit on the file of the learned Principle Subordinate Judge, Tirunelveli in O.S. No. 143 of 2013 for declaration that the election held on 16.3.2013 as null and void in which the elected and contested members were parties, and if there is any irregularity in the Voters List, the Petitioners/Plaintiffs could get their appropriate remedy in their fresh Suit in O.S. No.143 of 2013 and therefore, for this purpose, the

examination of the Commissioner, as a Witness, on their part, in the application in I.A No.560 of 2013 is not at all required.

22. The same view has been taken by the learned Trial Judge and therefore, the Revision in C.R.P. No.53 of 2014 does not have any merit and therefore, the same is liable to be dismissed.

23. On coming to the Revision in C.R.P. No.418 of 2014, as discussed in the foregoing paragraphs without seeking impleadment in the main Suit in O.S. No.128 of 2011, seeking impleadment in the Interlocutory Application, is not sustainable in the eyes of law.

24. Sub-rule (2) to Rule 10 of Order 1 of the Code of Civil Procedure, empowers the Court either to strike out or to add parties.

25. It envisages that the Court may at any stage of the proceedings, either upon or without the Application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person, who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court, may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the Suit, be added.

26. On a cursory perusal of sub-rule (2) to Rule 10, we can understand that this Rule consisting of two portions The first portion speaks about the striking out the name of any party who has been improperly joined, whether as Plaintiff or Defendant. The second portion empowers the Court to add any person, who ought to have been joined, either as Plaintiff or Defendant or whose presence before the Court may lie necessary in order to enable the Court effectually and completely to adjudicate upon and to settle all the questions involved in the Suit.

27. In so far as the Petition in I.A. No.43 of 2014 is concerned, the Petitioner, if at all he is a necessary party for the effective adjudication of the Suit, he ought to have sought, the relief of inclusion of his name in the main Suit and in consequence thereof, he could have sought the relief of inclusion of his name in the Petition in I.A No.298 of 2013. But without adopting proper procedure, seeking the relief of inclusion of his name as the proposed Fourth Respondent in the Application in I.A. No 298 of 2013, is not proper.

28. Further, he has also not made clear as to how far his presence is required for the disposal of the Application in I.A. No. 298 of 2013. The averments of the Affidavit filed in support of the above said Application do not disclose any reason for his impleadment in the said Application. It is also settled proposition of law that parties cannot be added as to introduce a new cause of action because if the Revision Petitioner/proposed Fourth Respondent is construed as a necessary and proper party, the Respondents 1 to 3/Plaintiffs would have impleaded them as one of the parties in the Suit and further, it is also the settled principle of law

that parties cannot be added so as to alter the nature of the Suit. If it is done so, it would be an improper addition.

29. As adumbrated supra, sub-rule (2) provides for the addition -

(a) of necessary parties; and

(b) of proper parties.

Necessary parties are parties, who ought to have been joined as parties necessary to the constitution of the Suit without whom, no Decree at all can be passed. Before passing an Order under this Rule, the Court must be satisfied that the person proposed to be brought on record could have been impleaded in the Plaint as originally framed and that his presence is necessary for an effective adjudication of the question in dispute.

30. Keeping in view of this position, an order directing a person to be brought on record reserving the adjudication of the question whether he is a necessary party to a later stage, is erroneous. Secondly, proper parties are those, whose presence enables the Court to adjudicate more effectually and completely. Failure to implead necessary party as a party to the proceedings is fatal. As far as the Petition in I.A. No.43 of 2014 is concerned, this Court is in agreement with the finding of the learned Trial Judge.

31. Having regard to all the related facts and circumstances, this Court finds that C.R.P. No.418 of 2014 is also deserve to be dismissed and accordingly, the same is dismissed, confirming the impugned Order of the learned Trial Judge with costs.

32. In the result, both the Civil Revision Petitions viz., C.R.P. Nos.53 & 118 of 2014 are dismissed with costs of the Respondents. Consequently, connected Miscellaneous Petitions are also dismissed.