
(2012) 04 MAD CK 0030
In the Madras High Court
Case No : O.S.A. No. 65 of 2012

Rev Dr. Colin and L. Raymond

APPELLANT

Vs

Rev Dr. J. Samuel Sudhakar and Others

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Citation : (2012) 04 MAD CK 0030

Hon'ble Judges : R. Karupiah, J;P. Jyothimani, J

Bench : Division Bench

Advocate : N.D. Bahety, for the Appellant; V.R. Thangavelu for R1, R2 and R5, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—This Original Side Appeal is preferred against the common order dated 6.7.2011 made in O.A. No. 515 of 2011 and A.

No. 2769 of 2011 in C.S. No. 407 of 2011. Heard the learned counsel on either side and perused the materials placed on record.

2. The plaintiff is the appellant herein. The appellant filed the suit for declaration that the defendants are ceased to be the members of the Selet

Vestry/Pastorate Committee of Christ Church at No. 56, Anna Salai, Chennai-2 after 8.5.2011, apart from declaring that the discharging of duties

by the defendants, as members of the Selet Vestry/Pastorate Committee, as null and void and for a consequential injunction.

3. Pending the said suit, the appellant filed two applications, one seeking an order of injunction restraining the defendants from discharging,

functioning or holding any meeting of the Pastorate Committee and the other seeking appointment of an Advocate Commissioner to seize the

electoral roll, register of members, books of accounts, etc.

4. In fact, it is not in dispute that the election to the General Body has taken place on 19.6.2011, in which six Office Bearers were elected. Of

course, the election was conducted as per the orders of this Court and subject to the result in the suit. It is also not in dispute that after the election,

which took place on 19.6.2011, for more than eight months, the elected body has been functioning, which is in effective control of the Church and

various Schools under the control of the Church. There is nothing on affidavit by the appellant to show that the elected body has been mismanaging

the affairs of the Schools as well as the Church. The learned Judge, taking note of the fact that by interfering with the functioning of the elected

body or the Pastorate Committee, there will be a vacuum, which will result in greater damage to the functioning of the institutions under the control

of the Pastorate and it is in that view of the matter, the learned Judge dismissed the applications, against which, the present appeal has been filed.

5. Mr. N.D. Bahety, learned counsel appearing for the appellant would vehemently contend that the very constitution of the Pastorate Committee,

the functions of which were discharged by the defendants, is opposed to the Constitution of the Church and therefore, such persons, who are

illegally holding the post, cannot have any right to either convene the Annual General Body Meeting or conduct the election. Consequently,

according to him, any election conducted by such illegal body will not have any legal status and this aspect has not been taken note of by the

learned Judge.

6. On the other hand, it is the contention of the learned counsel for the respondents that inasmuch as the election has already taken place and the

newly elected Office Bearers are functioning for more than eight months, unless and until their election is set aside, in the manner known to law, the

appellant is not entitled to any relief.

7. On hearing the learned counsel on either side, we are of the view that inasmuch as, as per the direction of the learned Judge, the election has

taken place on 19.6.2011 and as on date the validity or otherwise of the election of those Office Bearers has not been questioned by anyone, the

balance of convenience is that the institutions under the control of the Pastorate must be effectively administered by a body of individuals. When the

defendants, as a body of individuals elected, are effectively administering the functions of the Church as well as the Schools, any interference, at

this stage, will amount to creating a vacuum, as correctly held by the learned Judge. Even if ultimately the plaintiff succeeds in the suit, as it stands

today as per his prayer, the right to conduct election is conferred only upon the Committee. Since according to the plaintiff, the Committee was not

properly constituted and as per the constitution, its term cannot be said to be extended, we are of the view that even in such circumstances, unless

and until the election of the Office Bearers on 19.6.2011 is set aside, the appellant cannot have any effective remedy and that would be possible

only when those elected members are made as parties and the plaint is suitably amended.

8. Therefore, we are of the view that considering the balance of convenience and the prima facie case, the order of the learned Judge does not

warrant any interference by this Court. Accordingly, the appeal stands dismissed. However, considering the term of Office to be held by the

elected body and there has been a serious issue raised about the very status of the person who conducts election, we are of the view that the suit

must be disposed of at any earlier point of time so as to give a quietus to the entire issue. It is brought to the notice of this Court that summons have

not been served in the manner known to law and as per the Original Side Rules. It is made clear that after summons are served, the defendants

shall file their written statement, reply statement, if any, by the plaintiff and after completion of the pleadings, the matter shall be listed before the

learned single Judge on the Original Side for framing of issues and for disposal of the suit expeditiously, in any event, within a period of nine months

from the said date. Subject to the above direction, the appeal is dismissed. No costs. M.P. No. 1 of 2012 is closed.