

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Smt. Vandana.R., LL.M., Additional Munsiff

Monday, the 20th day of November, 2017(29th Karthika, 1939)ORIGINAL SUIT. NO. 530 OF 2016.

T.P. Sreeshaj, S/o. Late Karunakaran,)
aged 46 years, residing at Karuna Nivas,)
Post. Chovva, Kannur.) Plaintiff.

Vs.

- 1 M.C. Rameshan, Father's name not)
known, aged 52 years, Advocate,)
No.521, Trade Centre, Yogasala Road,)
Kannur – 670001.)
- 2 C.T. Yatheendradas, S/o. Raghavan,)
aged 68 years, 'Aparna', Kakkat, now)
residing at GM Nilayam, CHE-16/216,) Defendants.
near Mahasiva Temple, Post Chovva,)
Kannur District.)
- 3 P.P. Rajendran, S/o. T. Kunhikannan,)
aged about 66 years, Director,)
The Chovva Educational Soccity,)
Post Chovva, Kannur -670006.)

- 4 T.K. Gireeshan, S/o. T.K. Kumaran,)
aged 59 years, Director,)
The Chovva Educational Socceity,)
Post Chovva, Kannur -670006.)
- 5 T.K. Susheela, D/o. Govindan,)
aged about 82 years, Thandayankandy)
House, P.O. Chovva, Kannur-6.)
- 6 T.K. Sumodh, S/o. T.K. Kumaran,)
aged about 55 years, Thandayankandy)
House, P.O. Chovva, Kannur-6.)
- 7 T.K. Hareesh Kumar, S/o. T.K.)
Sukumaran, aged about 48 years,)
Lab Assistant, Thandayankandy House,) Defendants.
P.O. Chovva, Kannur-6.)
- 8 T.K. Sheena, D/o. T.K. Sukumaran,)
aged about 42 years, Thandayankandy)
House, P.O. Chovva, Kannur-6.)
- 9 Deepa Balakrishnan,)
S/o. A. Balakrishnan, aged 52 years,)
Krishna Deepam, Muzhappilangad,)
Kannur.)
- 10 C.T. Sudheendran, S/o. Late C.K.)
Raghavan, aged about 60 years, 4C,)
Sreerosh Will on Heighty, Anayiduku,)
Post Thana, Kannur -670012.)

- 11 T.P. Prakash, S/o. Late Kumaran,)
 aged about 75 years, Thandarkandy)
 House, Post Chovva, Kannur-670006.)
- 12 T.K. Jayaraman, S/o. T.K. Kunhiraman,)
 aged 65 years, Director,)
 The Chovva Educational Society,)
 P.O. Chovva, Kannur – 670006.)
- 13 The Principal, Chovva Higher Secondary)
 School, P.O. Chovva,) Defendants.
 Kannur- 670006.)

Suppl. Defendant No. 14:-

- 14 Valsala Kumar, S/o. Kumaran,)
 Grandson of P.K. Bapu, 64 years,)
 Business, Vishnu, Chovva, Kannur.)
 Suppl. Defendant No.14 impleaded as)
 necessary party (3rd party) as per order in)
 IA.2144/17 dt.17/10/2017.)

This suit is coming on 13th day of November, 2017 for final hearing before me in the presence of S/Sri. K.K. Balaram, K. Babu, K.O. Prathap Nambiar & N.P. Dhanya, Advocates for plaintiff and of Sri. Pramod Krishnan, Advocate for 1st defendant and of Sri. Prasad.M.K., Advocate for 2nd defendant and of Smt. Kavitha.G., Advocate for defendants No. 3 to 11 and of S/Sri. P.K. Anwar & Shumla Das, Advocates for 12th defendant and of Sri. P.K. Mahash Advocate

for 13th defendant and of Sri. K. Shaju, Advocate for 14th defendant, the court passed the following:-

ORDER

List of eligible voters prepared in OS 530/16 as per the order of Hon'ble Sub Court, Kannur in CMA 1/17 by its order dated 3.03.2017.

2. Plaintiff in the above suit has filed an affidavit stating that as per the order of Hon'ble Sub Court, Kannur in CMA 1/17, the Hon'ble Sub Court had appointed Advocate Kasthuri Sahadevan as the Commissioner to conduct election of Chovva Educational Society. The Hon'ble Sub court has further directed the Advocate Commissioner to obtain necessary direction from the lower court if necessary. Hence, the Advocate Commissioner has by memo dated 7.4.2017 requested this court to grant a list of voters for eligible to cast their vote in the election to the management committee of Chovva Educational Society. Accordingly, plaintiff, defendant no.2, defendant no.3 to 11 and defendant no.12 has furnished list of eligible voters.

3. The list of eligible voters submitted by the plaintiff, defendant no.2, defendant no.3 to 11 were opposed by defendant no.12. According to defendant no.12, the list furnished by the above mentioned parties are not true and correct and the persons mentioned in the list are not in any way connected with the management of Chovva Educational Society. According to defendant no.12, he along with one P.K.Balakrishnan is the elected Manager and Secretary of Chovva Educational Society and plaintiff and defendants no.3 to 11

have been causing hardships and hurdles in the smooth functioning of the society. Further according to defendant no.12 as per the records available with the Society which was confirmed by the Hon'ble Munsiff Court, Kannur in OS 305/08 following persons only have the right to vote in the election of the managing committee. 1) C.T.Yadeendradas, 2) T.K.Sukumaran, 3) K.A.Lakshmanan, 4) T.K.Ramakrishnan, 5) A.V Rajeev Nambiar, 6) T.K.Jayaraman, 7) T.K.Gireeshan, 8) T.K.Raveendran, 9) K.P.Ashokan, 10) T.P.Sreeshaj, 11) P.K.Balakrishnan, 12) K.O.Jayaram, 13) M.C.Shyamsunder, 14) Deepak Balakrishnan, 15) Girija Vijayan, 16) C.M.Nalini, 17) C.T.Sudheendran, 18) T.Prakashan, 19) M.P Vanajakshi, 20) T.K.Sreekath Sreenivasan, 21) Susheela Sahadevan, 22) Jayachandran C.K., 23) Lakshmikutty, 24) Shylaja Balakrishnan, 25) P.Anandan, 26) P.P.Rathnakaran, 27) P.P.Rajendran, 28) T.K.Susheela. It is further contended that from the above mentioned persons Rajeev Nambiar, K.A.Lakshmanan, T.K.Sukumaran, Susheela Sahadevan, P.Anandan, K.P.Ashokan, T.K.Ramakrishnan and T.K.Raveendran are no more and so as per the byelaw of the Society, one among the legal heirs of deceased member is eligible to be included as a member in the society. As such legal heirs of two deceased member have been given membership, they are Arun Rajeev S/o Rajeev Nambiar and P.Valsakumaran, S/o P.Kumaran. Legal heirs of other deceased members have also submitted for the membership in the society. Since there is no required quorum in the Director board, the membership has not been issued. Similarly, M.P.Vanajakshi, T.K.Sreekanth and Sreenivasan and Shylaja

Balakrishnan who are the members of the society had casted their votes in the last election conducted by Hon'ble Principal Munsiff Court, Kannur on 24.12.2010. The name of those persons were included in the list of pannel submitted by the defendants no.2 to 11.

4. It is further contended by defendant no.12 that in the panel submitted by defendants no.3 to 11 the name of 8 persons are included, who are not members of the society. They are T.K.Sumodh, T.K Harish Kumar, T.K.Sheena, T.K.Shyamala, P.C.Ramadas, Ajith Ramadas, Prasanna Sreedharan and Sreedharan. According to defendant no.12, the above mentioned 8 persons had formerly claimed to be members of the society in OS 305/2008. After holding detailed enquiry, the court had rejected their claim. Against the said order T.K.Sumodh, T.K.Harish Kumar and T.K.Sheena had filed an appeal before the Hon'ble High Court of Kerala as OP(C) no.1225/2010. The Hon'ble High Court had also dismissed their claim as per its order dated 22.12.2010. In the mean while, the Hon'ble Principal Munsiff Court had prepared list of eligible voters containing name of 28 persons and directed the returning officer to conduct election for the year 2010-2013. According to defendant no.12, the said election was the last election conducted in the society. It is by suppressing all these fact that the plaintiff, defendants no.2 to 11 had filed two bogus panels styling themselves as the members of the society. Hence, defendant no.12 contends that the list submitted by defendant no.12 may be accepted and reject the list submitted by defendants no.2 to 11.

5. Exts.A1 to A6 were marked on the side of the plaintiff.

Exts.B1 to B4 were marked on the side of the defendant no.12.

6. Heard both sides.

7. The case advanced by the plaintiff is that defendant no.2 in the present suit has earlier filed a suit before the Hon'ble Principal Munsiff's Court, Kannur as OS 305/2008 to declare the election conducted by the society as void. The said suit was filed on 8.6.2008. As per the judgment in the above suit dated 19.08.2011, the election conducted on 23.06.2008 was found to be improper since it was conducted without following the rules and regulations of the society in the manner of conducting election. The judgment in OS 305/2008 was marked as Ext.A2. Further according to the plaintiff, at the time of disposing of the above suit, the Hon'ble Principal Munsiff Court had appointed K.A.Lakshmanan and T.K.Jayaraman (4th and 9th defendant in OS 305/2008) to run the day to day affairs of the society for a period of 6 months. They were also directed to conduct election within a period of six months as contemplated in the byelaw and thereafter to hand over the charge to the duly elected governing body. According to the plaintiff, thereafter no election was conducted within the time frame fixed by the Hon'ble Court and above mentioned two persons are autonomously running the society violating the order of the court.

8. Plaintiff contends that at present there is no governing body to the Chovva Educational Society and the members of the committee as on the date of filing of OS 305/2008 alone are the eligible to vote. It is to be noted that clause 4 of Ext.A4, Rules and Regulations of Chovva Educational Society mandates to maintain a correct register in the

committee office and the persons whose names are entered in the said register alone shall be eligible to vote at elections. According to the plaintiff no such register is maintained in the society. Defendants also does not have a case that a register was maintained by the society at its very inception. Hence it is contended by the plaintiff that members mentioned in Ext A5 and Ext A6 alone are entitled to cast their vote. Ext A5 and Ext A6 are the certified copies of the minutes book of the general body held on and 17.08.1997.

9. At this juncture, it is also to be noted that as per Ext A2 judgement of the Hon'ble Principal Munsiff Court, the election conducted on 24.12.2010 was held to be improper by its judgment dated 19.08.2011. Hence, at present there is no governing body to the Chovva Educational Society and K.A.Lakshmanan and T.K.Jayaraman (4th and 9th defendant in OS 305/2008) was directed to run the day to day affairs of the society for a period of 6 months. As per the bye law only members of the society have the right to vote and as per available records last general body meeting of the society was held on 17.08.1997. Ext.A5 minutes book of the general body meeting held on 6.01.1991 would show that a total number of 26 persons had participated in the meeting. Ext.A6 would reveal that a general body was convened on 17.08.1997 and 22 persons had participated in the meeting in person and 14 members appeared through their proxies. Hence, the total number of 36 persons have appeared for the meeting. As already stated since the parties have not produced any register containing the names of the members of the society, Ext A5 and A6 has

to be relied upon to determine as to who are the members of the society.

10. It is to be noted that defendant no.12 also does not have a case that after Ext.A6 general body any other meeting was convened in the society. But it is the case of defendant no.12 that only persons mentioned in Ext.B4 register and the persons who have casted their vote in the election held on 24.12.2010 alone are entitled to vote. It is to be noted that Ext.B4 does not reveal as to the date on which it was created. If it was created after Ext A2 judgment it would have no relevance since after Ext A2 there was no governing body or committee and the election held on 24.12.2010 was declared to be improper.

11. Similarly the list furnished by defendant no.12 also contains the name of legal heirs of deceased members of the society. At this juncture it is worthwhile to note Clause (8) of Ext.A4 Rules and Regulations of the Society.

12. It reads as follows: “The committee which is the governing body shall be elected from themselves and it shall hold office for 3 years. In case of death or resignation of a member of the committee it shall be open to the committee to nominate any one from the general body of members and a member thus nominated shall hold office for the unexpired portion of 3 years”.

13. As already stated at present there is no governing body to Chovva Educational Society and as per clause (8) of Ext.A4, it is for the committee to nominate any person as member in the general body. Defendant no.12 has not adduced any evidence to show in which

general body, the committee has nominated the legal heirs of deceased members.

14. Hence, in the light of discussion in the preceding paragraph I am of the view that members who attended the last general body meeting as per Ext A6 are eligible to cast their vote. Accordingly, following persons are entitled to cast their vote.

1. P.P.Rajendran
2. T.K.Jayaraman
3. T.K.Gireesh
4. T.K.Susheela
5. T.K.Sumod
6. T.K. Harish Kumar
7. T.K.Sheena
8. P.P.Sreeshad
9. P.K.Balakrishnan
10. K.O.Jayarajan
11. M.C.Shyam Sundar
12. Deepa Balakrishnan
13. Girija Vijayan
14. C.M.Nalini
15. C.T.Sudheendran
16. P.P.Prakash
17. T.K.Shyamala
18. A.V.Lakshmikutty
19. P.C.Ramdas

20. Ajitha Ramadas
21. Prasanna Sreedharan
22. Sreedharan.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court, this the 20st day of November 2017).

ADDITIONAL MUNSIFF.

Plaintiff's Exhibits:-

- A1 : 05/12/2016 : Notice issued by 1st defendant.
- A2 : 19/08/2011 : Certified copy of Judgment in OS.305/08 of the Hon'ble Principal Munsiff's, Kannur.
- A3 : 30/03/2012 : Certified copy of Order in IA.934/2012 of the Hon'ble Sub Court, Kannur.
- A4 : 10/12/1999 : True copy of Rules and Regulations of the Chovva Educational Society.
- A5 : - : Certified copy of Minutes Book of the general body of Chovva Educational Society.
- A6 : - : Certified copy of Minutes Book of the general body of Chovva Educational Society..

Defendants' Exhibits:-

- B1 : 03/12/2010 : Certified copy of Order in IA. 3870/2010 of the Hon'ble Principal Munsiff, Kannur.
- B2 : - : Certified copy of Voters List of Chovva Educational Society.
- B3 : 17/07/2008 : Certified copy of Order in IA.2278/2008 of the Hon'ble Principal Munsiff, Kannur.

B4 : - : Member List Register of Chovva Educational Society.

Plaintiff & Defendants' Witness:- Nil.

ADDITIONAL MUNSIFF.

Mmh/-

FAIR/COPY OF ORDER IN
OS. No.530/16

DATED: 20-11-2017.

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ORDER IN
OS. No.530/16
DATED: 20-11-2017.

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