

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**
I Additional District Munsif, (FAC) Nagercoil.

Wednesday, on this the 4th day of October 2023

I.A. No. 7 of 2023
in
O.S. No. 46 of 2023
(CNR.No.TNKK04000084-2023)

The Bishop

R.C.Diocese, Kottar, Nagercoil

... Petitioner/1st Defendant

-vs-

1. The St. Michael Archangal Church,
Mela Asaripallam
Reb. by Mr.Justus Rajan,

2.Mr.Sudharshan
The Parish Priest
St. Michael Archangal Church,
Mela Asaripallam

...Respondents/Plaintiff & D2

This Petition came up before this Court for hearing on 01.09.2023 in the presence of Thiru.N.Retnaswamy, Advocate for the Petitioner/1st Defendant and Thiru. S.Pillai Monicantan and Thriu. N.S.Arumugavel, Advocates for the Respondents/Plaintiff and upon perusing the case records and having stood over till date for Consideration, this Court delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Order VII Rule 11 and Section 151CPC, seeking an order to reject the Complaint in O.S.No.46 of 2023.

2. The Petitioner had stated that the Respondent/Plaintiff has no locus-standi to file the Civil suit against the 1st Defendant and the Plaint is void in law and that this Court is not having Jurisdiction regarding the Internal Management of Church matters, which is specifically included under Section 34 of Specific Relief Act and Section 41(e)(i) of Specific Relief Act. The Principal Subordinate Judge, Nagercoil, alone is having jurisdiction over the religious or nature of the Plaint claim.

3. Further, the Plaintiff failed to follow the Mandatory Provision of Order I Rule 8 CPC, hence the present Plaint is void in law. On the basis of void Plaint, no right is vested with the Plaintiff. Plaintiff not having any Civil Right against the 1st Defendant. Hence, the above Plaint has to be rejected under Order VII Rule 11 CPC. Further, prior to numbering the Suit, sanction Under Section 92 CPC, have to be obtained from the Principal Sub Court, Nagercoil, for the Administration of Parish Council. Since no such sanction has been obtained, the Plaintiff is not having any Civil Right to file the suit, before this Court. Hence, the same has to be rejected. The Plaint do not disclose any cause of action. The plaint paragraphs 1 to 4, 5 and 6 are barred by law. In an injunction suit, seeking Mandatory Injunction to include three nominated committee members is illegal. They were not made as parties. Hence, the suit is barred by Order I Rule 10 CPC. The suit is barred for non-joinder of necessary parties. Under the Indian Constitution and Canon law, Permanent Injunction cannot be granted, in respect of C and E prayer.

4. Further, the Petitioner had extracted his letter dated 16.03.2023 in the affidavit, filed in support of the above Petitioner. The Petitioner claimed that the

Plaintiff was bound by Canon law and the above suit is against the spirit of Canon Law. As per the Parish Pastoral Council, a member or Office bearer of Paris Council shall not file any suit without permission of the 1st Defendant Bishop. Hence, the suit is not maintainable in law. The Plaintiff without challenging the Pastrol council bye-law (part XII No.8 page 25) and without including all the members of the Church. The suit is barred under section 34 and section 41(e) (i) of the Specific Relief Act. The Plaintiff cannot file suit, without having any Civil Right. The Plaintiff sought for negative relief . The same is bad in law.

5. Further, the Petitioner had also extracted the Petitioner's reply dated 30.03.2023, in the affidavit filed in support of the above Petition. The Petitioner had stated that there is no cause of action against the Defendants and the entire Plaint is futile one and not workable and the provisions of Order I Rule 8 CPC is not complied with . Hence, the Petitioner prayed for rejecting the Plaint.

6. The Respondent/Plaintiff had filed counter denying the Petitioner's contention. The Respondent contended that this Court has jurisdiction and the above suit is not barred under section 34 and 41 of the Specific Relief Act. The Petitioner had conducted case in various Munsif Courts and as such he cannot claim that the above suit is bad. The legal requirements under Order I Rule 8 CPC has been strictly followed . The Petitioner had floated all basic norms and duties. Though he claimed to be the spiritual head of R.C diocese. For the above suit sanction under Section 92 CPC from the Principal Sup Court Nagercoil is not warranted. Section 92 CPC applies only to Trust matters. Neither the 1st Defendant diocese nor the Plaintiff's

church falls under the perview of Trust Act.

7. Further the Plaintiff had pleaded true and correct cause of action. The inclusion of three persons namely Mrs. Sriyepushpam, Mr.Jeyalas and Mr. Iruthaya Raj as nominated committee members is illegal. Since, they are not under the category of un-represented minorities namely ladies and youngsters. As such, they need not be made as parties to the suit . Moreover, the suit is filed under Order I Rule 8 CPC, which enables interested persons having similar interest, to get themselves implictated in the suit. Non-Joinder of necessary parties this is only a procedural irregularity. That can be rectified by suitable amendments. The same cannot be a ground for rejection of Plaint. The Petitioners notice referred in para 7 of the affidavit filed in support of the above Petition is illegal and against natural justice.

8. Further the Petitioner cannot take away the Respondent/Plaintiff's Civil Rights, by using the name Canon law, as because it was not recognized by any Act or statute. The alleged bye- law is self-proclaimed instrument by the Petitioner. The same is not recognized by Roman Catholics. The same was enacted for diminishing, eradicating the fundamental rights of people. The Suit is not barred under section 40 of Tamil Nadu Court fees and Suit Valuation Act. Since, the Suit pertains to the management of the Church and not related to any immovable property, it need not be included as Schedule of Property. The Plaintiff had filed above Suit, with cause of action. The above Petition is not maintainable under law and facts. Hence, the Respondent prayed for dismissal of the above Petition.

9. The point for consideration is whether the above Petition has to be allowed or not?

10. The Petitioner upon filing affidavit in support of the above Petition had extracted his reply notice dated 30.03.2023 as well as his letter dated 16.03.2023. The act of extracting the content of a document, is against the Fundamental Principles of pleading i.e. facts alone have to be pleaded and not evidence, as envisaged under Order VI Rule 2 CPC.

11. Further, such attempt of extracting evidence in the affidavit, had been made in order to circumvent the settled proposition of law i.e. only plaint alone has to be looked, into while adjudicating application under Order VII Rule 11 CPC. The Petitioner, by extracting the contents of the documents, wants this Court to look at those documents, under the guise of perusing pleadings, which is not permissible under law. In so far as, the above Petition is concerned, the Petitioner had rested his claim on all limbs of Order VII Rule 11 CPC. The Petitioner had pleaded that the Suit prayer is barred under section 34 and section 41 Specific Relief Act and also under section 40 of Tamil Nadu Court Fee and Suit Valuation Act and that there is no cause of action for the above Suit.

12. Further the Petitioner claimed that without challenging the Canon Law, the Suit is not maintainable and also claimed that the Suit has to be rejected for non-Joinder of necessary parties. Though, the Petitioner had raised all limbs in Order VII Rule 11 CPC. It has to be seen that whether the Petitioner's case falls within any of

the limbs of Order VII Rule 11 CPC, warranting rejection of Plaint. The Petitioner's claim of filing Suit, by not impleading the nominated committee members, amounts to non-joinder of necessary parties and as such the plaint has to be rejected, is not tenable for the reason, that Non-Joinder of necessary parties is not a ground for rejection of plaint. *The Judgement of the Hon'ble High Court of Madras (Madurai Bench) in S.T.Balamurugan -Vs- Karthik and others reported in 2021 (1) MWN (Civil) 56, deals with a case where injunction is sought against a person, who is not made as respondent. The said Citation is not applicable to above Order VII Rule 11 CPC Petition.*

13. Further with regard to the Petitioner's claim to reject the Plaint for want of cause of action, the Petitioner relied on the Judgements of the Hon'ble Supreme Court in *Dahiban -Vs- Arvindbhai Kalyanji Bhanusali (Gujra) (D) thr.Rs.& others reported in (2020 (5) CTC 471) and Church of Christ Charitable Trust and Educational Charitable Society Representated by its chairman -Vs- Ponniamman Education Trust Representated by its Chairpreson/Manging Trustee, reported in (2012) 8 Supreme Court Cases 706 and Raghwendra Sharan Sing -Vs- Ram Prasanna Singh (Dead) by LR's, reported in 2020-2-L.W 889. The said citations pertains to a case where the Plaintiff had deliberately omitted to mention the date of Sale, which if disclosed will render the suit barred by limitation. The facts stated in that citation and above suit facts are different. In the case on hand, the Petitioner had not contended as to any suppression by the Plaintiff. Moreover on perusal, the Plaint contains cause of action. It is settled law that pleading cause of action would suffice,*

to try the Suit. Whether the pleaded cause of action is proved or not could be adjudicated only after trial. While deciding Order VII Rule 11 CPC, application, whether the Plaintiff had proved the cause of action or not is not question in issue. Hence the Plaint could not be rejected on this ground also.

14. Further, the Petitioner's claim that without challenging the Canon law the above suit is bad is also, do not falls within the ambit of Order VII Rule 11 CPC. Hence on this ground also, the above suit could not be rejected. The Petitioner's claim that the Plaintiff ought to have obtained leave under section 92 CPC, prior to filing of the above Suit from the Principal Sub-Court is also not tenable for the reason that, as conducted by the Respondent/Plaintiff, the Diocese of the Church is not a Trust and that the above suit is not filed as Trust Suit, under section 92 CPC. The Petitioners claim that the Suit is not maintainable before this court and it is maintainable only before the Principal Sub Court Nagercoil, is without any authority of law.

15. Further the Petitioner's counsel relied on the Judgment of the Hon'ble Madras High Court in C.S.Robert and another -vs- M.Kanagappan and 8 others reported in 2003(2) CTC 577 and contended that the Church and Church Properties vest on Bishop and that the Plaintiff has no right to Challenge him and as such, he could not maintain the suit. In this regard Article 26 of Constitution of India, refers to right to be in a religious denomination as a Civil Right and it could be adjudicated before Court of Law as Civil Right. In this regard, it would be appropriate the extract

the Judgment of the Hon'ble Madras High Court dated 30.11.2011 made in W.P.(MD) No. 13249 of 2011, made in Y.John Murray & Others -vs- The Registrar of Companies and others, as follows:- *“13..... Fundamental Right flowing out of Article 25 is distinct and different from an Ordinary right to be part of a religious denomination, that flows out of the membership of such denomination. This right is a Civil Right, which has to be enforced only through a normal Civil Court”*

16. Further the Petitioner's counsel had relied on *Hardesh ores (P) Ltd -Vs- Hede and Company and Sociedade de Fomento Industiral (p) Ltd, - Vs- Hede and Company*, reported in (2007) 5 Supreme Court Cases 614 wherein the Hon'ble Supreme Court of India, had held “Law” within the meaning of Order VII Rule 11(d) CPC includes Law of Limitation. In the case on hand, the Plaintiffs claim to have been elected during August 2022. As such, the question of limitation is not attracted in the case on hand.

17. Further the Petitioner's counsel had relied on *K.Akbar Ali -Vs-K.Umar Khan & others*, reported in (2021) (3) CTC 717, wherein the acts done in excess of Power granted under Power of Attorney has been dealt with, as such the said citation do not apply to the facts of the case in hand. The Petitioner's counsel relied on the Judgement of the Hon'ble Supreme Court in *Future Sector Land Developers LLP & anr -Vs- Bagmane Developers P.Ltd.& ors. etc.* reported in 2023 (2) CTC 464, the said citation pertains to case under Order VII Rule 10 CPC, as such the same is not applicable to above Petition filed under Order VII Rule 11 CPC.

18. Further the Petitioner's counsel relied on Sayyed Ayaz Ali - Vs- Prakash G.Goyal & others, reported in (2021 (2) MWN (Civil) 836, wherein the Hon'ble Supreme Court had held that while rejecting Plaint under Order VII Rule 11(d), CPC, Plaintiff could not be given liberty to amend prayer and pay requisite Court Fee. The facts in the said case is different from the facts of this case and the said citation do not apply to the above Petition.

In view of the discussions made above, this Court is of the considered view that the Petition lacks merits and that the Plaint could not be rejected under Order VII Rule 11 CPC and that the above Petition is liable to be dismissed.

In the result, the above Petition is dismissed. No cost

Dictated by me to the stenographer, taken down and transcribed by the stenographer and corrected and pronounced by me, in open Court this, the 4th day of October 2023.

I Additional District Munsif,(FAC)

Nagercoil.

Petitioner side witnesses and documents : Nil

Respondent side witnesses and documents : Nil

I Additional District Munsif,(FAC)

Nagercoil.

IADM, Nagercoil
I.A.No.7 of 2023
in
O.S. No.46 of 2023
Draft/Fair Order
Date: 04.10.2023.