

## **IN THE SUPREME COURT OF SEYCHELLES**

1. SUBRAMANIAN PILLAY
  2. ANBAZHAGAN RAMASAMY
  3. SUBRAMANIYAN GOVINDASAMY PILLAY
  4. JOTHINATHAN NAIDOO
  5. C. KUMARA KANNAN PADAYATCHI & ORS
- PLAINTIFFS**

**VERSUS**

1. SHANMUGAM PILLAY
2. DURAISAMY PILLAY
3. KANDASAMY PILLAY
4. VELMURUGAN PILLAY
5. GOVINDRAJU BASKARAN NAIDU

**DEFENDANTS**

Civil Side No 153 of

2010

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Mr. S. Rouillon for the Plaintiffs

Mr. D. Sabino for the Defendants

### **RULING**

#### **B. Renaud J**

By Plaint entered on 5<sup>th</sup> May, 2010 the Plaintiffs are praying this Court to make the following orders in its favour and against the Defendants and all other committee members -

- (a) Granting an injunction against the Defendants purporting to act on behalf of the Association and/or

- adopting and putting into practice any new resolutions until the final completion of this suit;
- (b) Terminating the appointments of the Defendants as committee members of the Association forthwith;
  - (c) Ordering the Defendants to hand over all Association documents, accounts, property and information presently in their possession to the new committee of the Association to be elected;
  - (d) Declaring that the Defendants remain liable and accountable for all their acts in respect of the association affairs notwithstanding their removal from office.
  - (e) Orders in respect of holding an Annual General meeting of the Association involving the participation of all members and persons wishing to become members and eligible to become members and to vote according to the rules of the Association, can participate and vote and such meeting to be to be held under the supervision and control of an independent authority such as officials of LUNGOS with minimum delay;

(f) Such other orders as may be fair, just and practical in the circumstances;

(g) The whole with costs jointly and severally against each Defendant.

In entering its Statement of Defense by Counsel, the Defendant raised 3 pleas in *limine litis* as follows:

1. The Plaintiff's prayers shall affect the Seychelles Hindu Kovil Sangam and 4 other committee members yet they are not parties to the Plaintiff. The Plaintiff is therefore bad in law and must be struck off.
2. The Plaintiffs have no cause of action. The Plaintiff is therefore bad in law and must be struck off.
3. The matters prayed for in the Plaintiff may be determined by and through the internal processes of the Association, for e.g. by an Annual General Meeting, as provided for by the Association's constitution and as prescribed by law. This Plaintiff is therefore litigious and vexatious, and therefore bad in law and must be struck off.

To decide whether a suit before the Court discloses a cause of action the Court at that stage determines that issue *ex-facie* the pleadings.

### **The parties**

The Plaintiffs pleaded that they are members of the Seychelles Hindu Kovil Sangam (“the Association”) an association registered under the Registration of Association Act Cap 201 for the main purpose of facilitating the Hindus religious philosophy in Seychelles and they have an interest in the general running of the Association and the Defendants are some of the present purported incumbent committee members of the Association.

The Defendant in its Statement of Defence denied the above pleadings and averred that they are the incumbent committee members of the Association. Furthermore, the Plaintiffs are required to prove that they are members of the Association.

To resolve the issue arising out of the above pleading and defence this Court has to do so based on evidence. At this stage there is no evidence before this court to enable it to determine which of the two versions are to be accepted. As the matter stands, the parties stated in the caption of this suit, whether they reside in Seychelles as per the address given or not, cannot be determined one way or the other and the parties as disclosed in the caption of

this suit stand until they are established by evidence to be otherwise.

As regards who to be joined as parties, it is up for the Plaintiffs to decide who to join but it is always opened to the Defendants to move the Court to join any other party whom they believe their presence is required before the Court in order to resolve all the issues between the parties. If the Plaintiffs elect not to join party or parties other than those stated in the Plaint, this cannot amount to the Plaint being bad in law.

### **Issue(s)**

The Plaintiffs' pleaded since the year 2004 that the Association has not had an Annual General meeting of the Association as required under its Rules and Cap 201 and this despite several Notices issued by the 1<sup>st</sup> Defendant in the press for the collection of subscriptions and for holding AGM several years in a row.

The fact pleaded in paragraph 4 of the Plaint as set out immediately above is sufficient ground for a cause of action which the Defendants have to answer. Having made this finding I do not believe that it is required of this Court to analyse further and in detail all the other pleadings in the Plaint, suffice to say that the Plaint had indeed raised a cause of action against the Defendants that the latter has to answer and this Court needs to resolve.

**Ruling**

Having found that the parties are proper before the Court and that the Complaint is not bad in law and that there is indeed an issue that needs to be tried, I hereby overrule and set aside the pleas *in limine* raised by the Defendants and order that this matter be heard on the merits.

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B. RENAUD

**JUDGE**

Dated this 11<sup>th</sup> day of November 2010