(2012) 05 KL CK 0029

In the High Court Of Kerala

Case No : C.R.P. No. 192 of 2012

C.R. Radhakrishna Pillai — APPELLANT

Vs

Bhargavi Amma and Another — RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 11, 115, 9, 92

Citation : (2012) 2 KLJ 874

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Leo George and T.T. Rakesh, for the Appellant; Saju S.A., for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—Is a suit maintainable for modification of a scheme already settled by court for the administration of a private religious trust? This is the interesting question that arises for consideration in this Civil Revision Petition filed u/s 115 of the Code of Civil Procedure, 1908. The first defendant by name ''Elampalloor Devaswom Trust'' is conceded by the parties to the suit to be a private religious trust. Therefore the provisions of Section 92 of the CPC do not ipso facto apply even though the principles can be extended. The scheme for administration of the trust had been settled in O.S. No. 280/1997-Sub Court, Kollam. There was a subsequent suit for modification of the said scheme in O.S. No. 408/1981 on the file of the same court. But the suit was dismissed and the decree is impugned in A.S. No. 100/2005-District court, Kollam which is stated to be pending. The present suit in O.S. No. 273/2011-Sub court, Kollam has been filed by persons who were not co-nominee parties to the earlier two suits. The principal prayer is for modification of the scheme settled as early as on 24.11.1958 in O.S. No. 280/1957. The other prayers in this suit are for accounting by the trustees and for their removal for breach of trust.

2. The second defendant who is the convenor of the trust raised a preliminary

objection as regards the maintainability of the suit. His contentions were two fold and they are as follows:

(i) The remedy, if any, of the plaintiffs in O.S. No. 273/2011 is to file appropriate applications in O.S. No. 280/1957 itself wherein modification of the scheme can very well be considered by court.

(ii) O.S. No. 273/2011 is barred by the principles of resjudicata in view of Explanation VI to Section 11 of the CPC and the parties are governed by the decree in O.S. No. 280/1957.

3. The plaintiffs on the other hand contended that the scheme settled in O.S. No. 280/1957 does not enable any of the aggrieved parties to file applications. It is also contended that the plaintiffs are not parties to the earlier two suits for the doctrine of resjudicata to operate. The plaintiffs reiterate that the entire fabric of the scheme already settled has to be altered for which a new suit is necessary. The present suit has been filed on an altogether different cause of action which was not present when the earlier suits were filed. The plaintiffs in short maintained that the suit in O.S. No. 273/2011 for modification of the scheme settled in O.S. No. 280/1957 and for ancillary reliefs is maintainable.

4. The second defendant had filed I.A. No. 4969/2011 in O.S. No. 273/2011 under Order 14 Rule 2 of the Code of Civil Procedure. This was for the purpose of considering the maintainability of the suit on the grounds stated supra as a preliminary issue. The court below has held that the suit is maintainable which is challenged by the second defendant in this Civil Revision Petition. I have heard Mr. P.B. Suresh Kumar, Senior Advocate on behalf of the revision petitioner. I have also heard Mr. S. Krishnanunni, Senior Advocate who had lodged a caveat on behalf of the respondent in the Civil Revision Petition.

5. True it is that a modification of a scheme settled can be had by an application made under the relevant clauses of the scheme without the necessity of a fresh suit. The suit for settlement of a scheme is analogous to an administration suit and therefore applications can be filed if the modification is for the purpose of administration. The law in this regard has been laid down in Raje Anandrao Vs. Shamrao and Others, . Such remedy can be resorted to even if there is no express provision in the scheme as held in Elias v. Elias, 1986 KLT 72. But does it mean that a fresh suit for modification of a scheme cannot be filed under any circumstance whatsoever? The plaintiffs in O.S. No. 273/2011 have averred that the existing scheme is not fool proof to protect the interest of the members of the trust. It is also averred that there is no delegation of power and specification of duties of the trustees. The consequences for breach of trust are also not spelt out in the scheme and that its entire fabric needs to be altered therefore. I am in these circumstances of the firm view that a suit of the nature filed in O.S. No. 273/2011 is perfectly maintainable.

6. I am fortified in this view by the judgment in Shrinivas R. Acharya and Others Vs. Purshottam Chaturbhuj and Others, . It is held therein as follows:

In case of a scheme framed by the court in a charity suit, question may arise or working out the rights declared by the judgment. Or the question may be of some ordinary modification in the scheme rendered necessary to enable the scheme to operate more beneficially. The effect of the liberty to apply in such a case would be to enable the court to deal with the matter in a summary manner. On the other hand vital and important questions may arise requiring substantial alterations in the scheme. This may also necessitate going into lengthy evidence. It cannot be laid down as a general rule that merely because there is available the procedure by way of any application, a substantive suit is necessarily barred. I fail to see how it can be said that asking for alteration of every nature in a scheme at some future date is to re-agitate a matter already disposed of in a previous suit.

(emphasis supplied)

7. I should also bear in mind that a civil court can entertain any suit of civil nature except those cognizance of which is expressly or impliedly barred. This is the purport and import of Section 9 of the CPC and the following decisions are apposite:

(i) Kamala Mills Ltd. Vs. State of Bombay, .

(ii) Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, .

(iii) Nagri Pracharini Sabha and Another Vs. Vth Additional District and Sessions Judge, Varanasi and Others, .

(iv) Dhruv Green Field Ltd. Vs. Hukam Singh and Others,

(v) Smt. Ramkanya Bai and Another Vs. Jagdish and Others, .

8. The suit in O.S. No. 273/2011 cannot also be said to be barred by resjudicata under Explanation VI to Section 11 of the Code of Civil Procedure. It may be true that all persons claiming any interest in the trust are bound by the decree and the scheme framed thereunder. But that does not certainly affect the right to file a suit for modification or for alteration of the scheme. A reading of the plaint reveals that the dispute relates to matters which have cropped up at a later stage in the working of the trust. It would not be the same ''res'' nor can it necessarily be said that the issue has been adjudicated upon in the previous suit. The plaintiffs have pointedly alleged misdemeanor on the part of the present trustees who were not holding office earlier. Voluminous evidence may have to be let in to establish the serious omissions and commissions on their part. Added to this is the fact that the decree in O.S. 408/1981 has not become final and is pending in appeal as stated earlier. The question whether the relief sought for by the plaintiffs could be granted in view of the decree in the earlier two suits is altogether a different aspect. The order of the court below holding that the suit is maintainable in law does not suffer from any infirmity. There is no error of jurisdiction in the order impugned warranting interference u/s 115 of the Code of Civil Procedure.

This Civil Revision Petition fails and is dismissed. No costs.