

(1918) 04 MAD CK 0056
In the Madras High Court

Gaspari Louis and Another

APPELLANT

Vs

Rev. Fr. C.P. Gonsalves

RESPONDENT

Date of Decision : 15-04-1918

Acts Referred:

Citation : 47 Ind. Cas. 941 : (1918) 8 LW 208 : (1918) 35 MLJ 407

Judgement

1. This suit, together with an execution petition which turns upon it, was brought by the Reverend Gonsalves, Vicar of the Roman Catholic parish church at Kalianpur for arrears of rent due by tenants of Church property. The only defence with which we are concerned is the defence that the plaintiff was not entitled to sue, as his appointment as manager or moktessor of the church property was not a valid one. The vicar was appointed by the Bishop upon the 14th November 1914, and the facts leading up to the appointment were these: The temporal affairs of the church were ordinarily administered by a body known as the junta composed of the heads of houses in the village. This body has been in existence for something like 30 years and has claimed and exercised the right to appoint the moktessor. The last moktessor appointed by the junta was a Mr. Louis who resigned his appointment in 1913. Attempts were then made to get the junta to appoint a successor, but the meeting held was so disorderly that no valid appointment could be made, and the vicar so informed the bishop. The bishop thereupon appointed the vicar to the office of moktessor pending further arrangements. In that capacity he brought this suit and the validity of his appointment is challenged.

2. The plaintiff puts his case at its highest on this broad ground : This church is part of the universal Catholic church and is bound by its laws, that is to say by the Canon Law, and it is an unquestioned tenet of the Canon Law that the temporalities of the church vest in the Pope whose authority may be regarded as delegated to the Bishops to the extent of their several dioceses. On this view any further delegation of his complete authority over the church property by the Bishop is merely permissive and can be resumed by him at will.

3. On the other side it was argued that the authority of the Canon Law is confined to the spiritual side and could not affect rights of property or kindred rights in the temporal possessions of the church which would be governed by the law of the land as administered by the courts.

4. We may say at once that we think any analogies drawn from the decisions relating to the property of the English Established Church are not really applicable to the present case. The Church of England is properly described as "established" just because of this unique feature about it, that it is subjected to the ordinary courts of law not only as to matters temporal but, even as to matters of doctrine. This is due to a variety of historical causes which need not now be examined. The Roman Catholic Church is not an Established Church. It is what is described as a voluntary association in the English cases; and the result of those cases of which the most important are *Long v. The Bishop of Cape Town* (1863) 1 Moo. P.C. 411 and *Merriman v. Williams* (1882) L.R.7 A.C.484 seems to be this : If you join a voluntary association you will be bound by any rules which it has framed for its internal discipline and for the management of its affairs. You may adopt the doctrine of the established or any other church en bloc, but if the voluntary association has adopted rules which differ materially from those of what may be called the parent body the members of that association will not be members of the parent church but will be an independent organisation with their own rules. It seems to us that the appellant in this case is in a dilemma. If this church is part and parcel of the universal Catholic Church as apparently he wishes it to be regarded, he must be assumed to be bound by the law of the church, i. e., the Canon Law, and if that be so, it is clear that the control of the temporalities vested in the Bishop, since the Canon Law recognises no distinction between the spiritual and temporal power of the Papacy and its local representatives, the Episcopate. If this church is to be regarded as an independent voluntary association which while adopting in the main the doctrines of the Roman Catholic Church has yet erected certain rules different from the rules of the Catholic Church in matters of discipline and management, then those rules must be proved in the same way that a custom would have to be proved in a court of law. Questions of custom may often in the end become questions of law as in the familiar instances where the courts have to say whether a custom is reasonable, is legal or is not inconsistent with the Law of the Land or with the terms of some document, such as e. g., a contract. But at the outset they must necessarily be questions of fact. You must first prove that the thing is done before you can go to enquire whether it legally may be done. Looking at the case from this point of view it seems sufficient to say that the learned judge has found that the evidence put forward has failed to support the contention that the junta has established a recognised custom of holding in its hands the appointment of a maktessor. He has found as a fact that such appointments as they have made have been merely permissive, as a matter of convenience and that the Bishop has never relinquished his claim to be the final repository of the power of appointment, We think that even if this be regarded as a voluntary association, a

person who joins it must be considered as prima facie subscribing to the rules of the Catholic Church as embodied in the canons unless he can give affirmative proof of an established usage to the contrary. The learned judge by his finding has negated the existence of such a rule in the present case, and as we do not think he misdirected himself in law in coming to that finding of fact, we cannot disturb it.

5. The appeal fails and is dismissed with costs.