

**(2000) 01 KL CK 0055**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 116 of 2000**

George

APPELLANT

Vs

Kanneth Family Association and Others

RESPONDENT

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**Date of Decision :** 22-01-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 297

**Citation :** (2000) 1 KLJ 332

**Hon'ble Judges :** D. Sreedevi, J;AR. Lakshmanan, J

**Bench :** Division Bench

**Advocate :** Paul C. John, for the Appellant; Alexander Thomas, Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

AR. Lakshmanan, J.—Heard the counsel for the appellant. The appellant is the first petitioner in the Original Petition, which was filed to grant the following reliefs:-

- i) to declare that the continuance of the proceedings in O.S.486/ 99 before the first respondent as illegal and unsustainable in law.
- ii) to issue a writ of certiorari and quash all the orders made in the O.S. 486/99 if any.
- iii) to issue a writ of prohibition prohibiting further proceedings in O.S.486/99 in the files of the 1st respondent.
- iv) to issue any other writ, order or direction as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.
- v) to grant the costs to the petitioners.

According to the appellant, the suit as framed is not maintainable under law. However, the learned Munsiff directed the issuance of a Commissioner, who was

asked to enquire and report whether there was any area allotted to each family in the parish cemetery and to report whether there is any area available to remove the dead body and to estimate the expenses which will be incurred for the same. In the above circumstance's, the appellant and others filed O.P.30630/ 1999 for the reliefs asked for and extracted above.

2. According to. the learned counsel for the appellant, the continuance of the proceedings in the Original Suit is in excess of the jurisdiction of the Munsiff and it is an abuse of the process of the court. However, the learned single Judge took the view that there is no ground to, interfere with the proceedings of the suit and that the writ petitioners have to get orders from the civil court itself. The correctness of the said judgment is under challenge in this appeal.

3. It is also alleged that the Munsiff has failed to comply with the directions of this court to frame issues regarding the maintainability of the suit and has committed grave violation of the order of this court. He has also passed an order in I.A.2707/1999 in the suit directing both the parties to maintain status-quo as seen by the Commissioner in his first report and the headstone if any put up by the parties has to, be removed for the time being. It is urged that dis-interring a human corpse from a public burial place and removing the memorial stone is an offence punishable under Sec.297 of the Indian Penal Code and, therefore, the second respondent herein cannot remove the dead body or the memorial stone by themselves as they will be liable to be prosecuted. It is also contended that the Suit has been filed with mala fide intention to use the court of Law as a medium to do something indirectly, which they cannot do directly. Therefore, a court of Law cannot be allowed to pass an order, if performed directly would culminate in an offence. A civil wrong done, if any cannot be undone by doing another wrong which is a criminal offence. Hence, it is submitted that the continuance of the proceeding in O.S. No. 486/,1999 on the file of the first respondent-Munsiff Court is clearly an abuse of the process of the Court: and the learned Single Judge ought to have prohibited the same.

4. We have considered the pleadings in this case." We are of the opinion that the writ petition is not maintainable at all on the facts and circumstances mentioned in the Original Petition. It is open to the appellant herein, who is "impleaded as a defendant in the suit, to file a written statement and also contest the suit. It is also open to the defendant to raise the question of maintainability of the suit and the jurisdiction of the court to try the suit and if the appellant is aggrieved against any direction or order passed, it is always open to him to approach the appellate court for appropriate relief and not to approach this court invoking its extra-ordinary jurisdiction under Art. 226 of the Constitution of India. We feel that there is some substance and merit in the contention regard to the maintainability of the suit. WE, therefore, direct the appellant herein to approach the lower court by filing a necessary petition in regard to the maintainability of the suit. It is stated that such a contention has already been raised in the written statement. If that be s6, the learned Munsiff should have decided the question of

maintainability of the suit and ought not have indulged in deciding the issue on Interlocutory Applications before deciding the question of maintainability suit. Resort to the jurisdiction under Art.226 is not intended as an alternative remedy for relief which may be obtained by suit, or other mode prescribed by statute. Where it is open to the aggrieved person to move another court or tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided in a Statute, this court will not entertain a petition under Art.226 to permit a machinery created by the statute to be bypassed. This court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed- Relief under Art.226 is also not available to the appellant herein for deciding the dispute now raised, for which the effective remedy is under the general law, civil or criminal. In fact the right claimed by the appellant/petitioner is not capable of being established in the summary proceedings under Art.226 because it requires a detailed examination of the evidence's may be had in a suit. As held by the Supreme Court in Sohan Lal V. Union of India, AIR 1957 SC 5259, the object of Art.226 is the enforcement and not the establishment of a right or title and that a petition under Art.226 cannot be converted into a suit. In general, therefore, a disputed question of fact is not investigated in a proceeding under Art.226, particularly where an alternative remedy is available.

We, therefore, dismiss the Writ Appeal and permit the appellant to approach the learned Munsiff for appropriate and necessary relief. If such a petition is filed, the learned Munsiff shall dispose of the same after giving opportunity to the respondent therein to contest the same.