

(2010) 02 KL CK 0028
In the High Court Of Kerala
Case No : F.A.O. No. 5 of 2010

Gopalakrishna Pillai

APPELLANT

Vs

Devaswom Trust

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, 92
Criminal Procedure Code, 1973 (CrPC) — Section 520

Citation : (2010) 1 KLT 669 : (2011) 6 RCR(Civil) 1283

Hon'ble Judges : M.N. Krishnan, J

Bench : Single Bench

Advocate : S. Sreekumar, P. Martin Jose and P. Prijith, for the Appellant; K.P. Kylasanatha Pillay, Sreedevi Kylasanath, V.J. Safeena and K.G. Balasubramanian, for the Respondent

Judgement

M.N. Krishnan, J.—This appeal is preferred against the order of the Sub Court, Chengannur in I.A. No. 393 of 2009 in O.S. No. 54 of 2009. It was an application for appointment of a receiver which has been dismissed by the court below and aggrieved by the same, plaintiffs in the suit have come up in appeal.

2. Before entering into the facts of the case, the first objection raised by the learned Counsel for the contesting respondents in the appeal deserve consideration. Learned Counsel would submit that the appeal herein is valued for the purpose of jurisdiction as below Rs. 1 lakh. He would contend that the suit has been instituted in the Sub Court and when the jurisdictional value does not exceed Rs. 2 lakhs under the provisions of the Civil Courts Act, the jurisdiction to file an appeal is the District Court and not the High Court and so the appeal is not maintainable and therefore it has to be returned.

3. On the other hand, learned Counsel for the appellants would submit before me that a reading of Section 92 C.P.C. would enable the court to understand that it is a matter of concurrent jurisdiction for the Sub Judge as well as the District Judge and when one of such forum is chosen by the party then the other forum cannot

be made use of for filing the appeal and therefore the only competent forum is the High Court to entertain the same.

4. So, let me first consider whether the jurisdiction of the Sub Judge and that of the District Judge are concurrent in nature. I need not elaborate much on the same for the reason that the matter is squarely covered by a decision of a Division Bench of this Court in Pazhukkamattom Devaswom v. Lekshmikutty Amma 1980 KLT 645. In that case, this Court very clearly held that the jurisdiction exercised by the Sub Judge and the District Judge is of a concurrent jurisdiction. Then what will be the impact, if it is of a concurrent jurisdiction has been considered in a criminal proceeding by a learned Judge of this Court in the decision reported in Mohassan v. Poulouse 1971 KLT 550. It was a case where an application u/s 520 Cr.P.C. was moved before a District Magistrate. u/s 520 there is concurrent jurisdiction for the District Magistrate as well as for the Sessions Judge. When a party, after failing to obtain an order from the Magistrate, wanted to challenge it a revision was preferred before the Sessions Court. This Court held that u/s 520, the jurisdiction conferred on the District Magistrate and the Sessions Judge is concurrent and when once the applicant elects one or the other forum, the remedy is exhausted and no appeal or revision would lie against that order to the other forum u/s 520. The jurisdiction of the other court would cease when once the matter is taken up by the court of corresponding jurisdiction. The remedy against an order passed by such a court will be by way of revision to the High Court. As against these, learned Counsel for the respondents invites the attention of this Court to various decisions under the Civil Courts Act and the Court Fees Act. There cannot be any quarrel about the proposition that it is the valuation that is given in the suit at the inception will determine the jurisdiction not only at that stage but till the end. But the said principle cannot be applied in this particular case obviously for the reason that there is a concurrent jurisdiction and the selection of one of the forums really militates against opting other forum as an appellate or revisional forum and by virtue of the decisions referred to above by me only the highest forum will have the jurisdiction to entertain such an appeal,

5. Now going by Section 92 C.P.C. the District Court and by a notification of 1966, the Sub Court have concurrent jurisdiction over the matter. Having chosen to take the jurisdiction of the Sub Judge's Court, necessarily the appellate forum cannot be the District Judge but only the appellate forum of the District Judge which is the High Court and therefore from these discussions, I hold that the appeal is maintainable and this Court has jurisdiction to entertain the same.

6. Now coming to the facts of the case. Now a days litigations after litigations are only regarding the administration of temples and religious places especially when there is more income derived from the same. The moral fabric and the ancient culture which had taught us to be really broad minded in nature is gradually getting weakened. Now the plaintiffs in the suit had moved a petition u/s 92 of C.P.C. seeking for a declaration that the temple involved is a public temple and

for framing of a scheme to manage the affairs of the temple. The contesting respondents are admittedly the owners of the property who had control over the temple as well.

7. Now by virtue of an agreement in the year 1973 between the Karayogam and the contesting defendants they had entered into an agreement whereby the freedom and liberty to conduct festivals in the temple have been entrusted to this Karayogam with certain limitations. A perusal of the agreement would reveal that the family had not thrown away their right over the temple or the property but had only given the power to do certain things in order to conduct the festival really in a good spirit. Now I am informed that there are suits between the Karayogam and the contesting defendants herein with respect to so many factors which are the subject matter of agreement including the conduct of the festival. There are orders passed by a competent court of jurisdiction regarding the matters and they are all still pending consideration for final disposal by the learned Munsiff. I am informed and as it is seen from the memorandum of appeals that there are four suits pending in the court. Now I refer this only for a particular purpose. The present approach is by the members of the public. Two of them claiming to be the ardent devotees of the temple and characterizing the temple as a public temple, wanted to get a declaration to that effect and also framing a scheme and to remove defendants from the management of the temple on the ground that it is a public temple. Learned Counsel for the appellants would strongly contend before me that when the court has prima facie applied its mind and granted leave u/s 92 CPC there is a lien in favour of the plaintiffs regarding the public nature of the temple. When there is some scramble for possession under such circumstances, it is contended that a receiver has to be appointed. It is to be remembered that when a petition is moved u/s 92 the court is only prima facie concerned with the averments in the plaint and the mere granting of sanction u/s 92 cannot be used to militate against the defendants in the case to shut the doors of a contest as a private temple. As expressed by me in the earlier paragraphs of the judgment, the contesting defendants have got the right over the temple is something which is visibly seen from the recitals in the agreement. Whether they manage it properly is a matter for consideration at the stage of trial. Now when the ownership of the temple is prima facie established and there is nothing to show that the ownership had been handed over to some other party by virtue of a valid document the normal presumption is that they continue to be the owners of the temple. Whereas the question of scramble for possession at this stage may be relevant. The very object under Order 40 Rule 1 of the CPC is to see that the property is not wasted or shattered, thereby making the subject matter of the suit non-extinct. It has to be remembered that the Karayogam and the contesting respondents are fighting against each other for the temple. There are interim orders passed by the court with respect to several matters therein. Just because a leave is granted and admittedly when these people have no right over the management of the temple but they claim to be interested in the temple as members of the public, the court

shall not on a mere averment appoint a receiver which will result in disastrous consequences. I do not want to elaborate, but it is sufficient to hold that the time has not come and it is not just and convenient at this stage to appoint a receiver for management of the temple. If confrontations continue and as litigations are pending before competent courts, it is for the parties who feel aggrieved by an action of a particular person can move the court for appropriate relief as well as laying down guidelines. But, I am informed that the deity is not properly maintained and things are not in very good shape. Whatever may be the truthfulness of the contention, the only possible direction this Court can give at this stage is to direct the Sub Judge to try the case and dispose it of as expeditiously as possible, at any rate, on or before 15.6.2010. If any emergent situation arises for redressal of any grievance, the parties are at liberty to move the court where the matter is. pending for appropriate orders. I also make it clear that the suit will be disposed of untrammelled by any observations contained in this judgment.

FAO is disposed of accordingly.