

(1977) 06 KL CK 0007
In the High Court Of Kerala
Case No : A.S.A. No. 6 of 1976

Kadampalakattu Avvu

APPELLANT

Vs

Bapputty and Others

RESPONDENT

Date of Decision : 28-06-1977

Acts Referred:

Kerala Education Act, 1958 — Section 7, 7(1), 9(3)

Citation : (1977) 06 KL CK 0007

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;K.K. Narendran, J

Bench : Division Bench

Advocate : T.R. Govinda Warriar and K. Ramakumar, for the Appellant; K.P. Madava Menon, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—We are unable to share the view of the learned Judge on the basis of which the learned Judge sustained the decree for injunction and for accounting granted by the trial court and by the lower appellate court, and modified the decree for removal of the 1st Defendant granted by the appellate court, in effect to a declaration directing that he is liable to be removed and pointing out the modus operandi for such removal. The aggrieved 1st Defendant in the suit has appealed to us against the decision of the learned Judge.

2. The matter arises out of a suit claiming three reliefs viz. (1) to remove the 1st Defendant from management of an aided Mopla Lower Primary School; (2) for an injunction against him from receiving the maintenance grant from the educational authorities; and thirdly for rendition of accounts in respect of amount of grant so far received. The building which housed the elementary school belonged to one Avaru who assigned it under Ext. A-1 dated 28th May 1959 to ten persons who are parties to the suit either as Plaintiffs or as Defendants. One Mariakutty Umma was appointed the Manager of the School. By Ext. B-5 dated 30th May 1959 the District Educational Officer recognised the 1st Defendant as the Manager. On the same date as Ext. A-1, by Ext. A-2 Mariakutty purported to

transfer the right of management to the ten persons in whose favour Ext. A-1 document was executed. It was on these facts and circumstances that the suit was filed for the reliefs noticed. We have already referred in brief to the reliefs granted.

3. Counsel for the Appellant invited our attention to the statutory provisions of the Kerala Education Act and the rules framed thereunder, viz. Section 7, Section 9(3) and Chapter XXVIII (dealing with maintenance grant) and Chapter III (dealing with approval of management). Section 7(1) provides that any educational agency may appoint any person to be the manager of an aided school under this Act, subject to the approval of such Officer as may be authorised by the Government. The explanation to Sub-clause (1) of Section 7 enacts that all the existing managers of aided schools shall be deemed to have been appointed under the Act. Sub-clauses (2) to (9) provide the various duties, responsibilities and privileges of the Manager. The properties of the school are to be in his possession and control and it shall be his duty to maintain the records and accounts in such manner as may be prescribed; he shall be bound to afford all assistance and facilities for inspection of the school and its records and so on. u/s 9(3) the Government may pay to the Manager a maintenance grant at such rates as may be prescribed. Chapter XXVIII deals with the disbursement of maintenance grant, and Chapter III deals with the management of private schools. It is unnecessary to notice in detail the provisions of these Chapters. We have referred to the statutory provisions only to point out that when the legal title of management is provided for by the statutory provisions as based upon approval by the educational authorities, it appears difficult to envisage how a suit to revoke a person duly approved by the educational authorities can lie without due cancellation or vacation of the approval. Nor are we able to understand how, against such a duly approved Manager, the relief of injunction can lie. On these grounds it appears to us that the decree for removal of the 1st Defendant and for injunction against him must be vacated.

4. The learned Judge has of course not granted a decree for removal of the 1st Defendant; but she has granted, in effect, a decree for declaration by directing as follows:

7. The trial court did not direct removal of the Appellant because such removal without appointing a substitute will affect the running of the school. It is open to the committee in whom the ownership of the school vests to frame a constitution with rules regarding the manner of appointment of Managers, get the rules approved by the Education Department, remove the Appellant from management and appoint another person as Manager and correspondent in accordance with the rules.

The Appellant's complaint that the above decree of the learned Judge was not justified appears to us to be well-founded and we would accept the same. When there was no ground, having regard to the statutory provisions, to de-recognise the 1st Defendant as Manager, and no attempt to do so, it appears to us to be

inappropriate to formulate provisions to bring about a removal of the Appellant, by formation of a Committee to be vested with the power of running the school or similar measures. This part of the decree of the learned Judge also should therefore be vacated.

5. Counsel for the Appellant cited to us the decision in Vasudevan v. Pappu 1969 KLT 46 and Gopalakrishna Pillai v. Director of Public Instruction and Ors. ILR 1976 Ker 86. These decisions do emphasise the position of the Manager under the provisions of the Kerala Education Act and the rules.

6. We are satisfied that the judgment and decree granted against the 1st Defendant cannot be sustained. We allow the appeal, set aside the judgment and decree of the learned Judge and direct that the Plaintiffs' suit will stand dismissed. There will be no order as to costs.