

**(1999) 05 KL CK 0015**  
**In the High Court Of Kerala**  
**Case No : C.R.P. No. 930 of 1999**

Kamalakshi Amma

APPELLANT

Vs

Karthiayani Amma and Others

RESPONDENT

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**Date of Decision :** 31-05-1999

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5

**Citation :** (1999) 2 KLJ 173

**Hon'ble Judges :** G. Sasidharan, J

**Bench :** Single Bench

**Advocate :** K.P. Balasubramanyan and M. Rajan, for the Appellant; M.K.S. Menon, for the Respondent

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## Judgement

G. Sasidharan

1. This is a revision filed by the first defendant in O.S.No.510 of 1996 on the file of the Munsiff-II, Kozhikode. The above suit was filed by respondents 1 and 2 for partition of properties, consisting of the school and its properties, movable and immovable. There is an alternate prayer in the suit for framing a scheme for management of the school. The above suit was contested by the revision petitioner by saying that she got absolute right over the school and its properties on the basis of the gift deed executed by mother. The petitioner raised the contention in the above suit that she is the manager of the school approved by the educational authorities. The trial court passed a preliminary decree in the above suit negating the contention of the petitioner that she got absolute right over the school and its properties on the basis of the gift deed. In the preliminary decree, there is a finding that a scheme has to be framed for the proper management of the properties appointing trustee thereof including the plaintiffs and defendants. There is a provision in the preliminary decree which would say that the parties could put forward suggestions for the framing of the scheme within two months from the date of passing of the decree. A decree for permanent injunction was also passed restraining the petitioner from making any

new constructions in the plaint schedule properties and also from making any new appointments in the school (teaching or non-teaching staff). Petitioner filed A.S.No.76 of 1999 in the District Court, Kozhikode. In the above appeal, an application I.A.No.579 of 1999, was filed under Order 41 Rule 5 to stay the operation and enforcement of the preliminary decree passed in O.S.No.510 of 1996. Stay of operation of further proceedings in pursuance of the preliminary decree passed in the suit was also sought for in the above I.A. The learned District Judge, passed an order in the above I.A. making provisions regarding appointment of teaching and non-teaching staff and also regarding construction of building. The directions given by the learned District Judge is in paragraph 8 of the order and that part reads as follows:

8. Regarding appointment of teaching and non-teaching staff, even though the power of appointment is vested with the Manager, I am of the view that the selection of teaching and non-teaching staff can be given to a committee consisting of the appellant and the three respondents. As and when vacancy arises the appellant shall file a petition before the Appellate Court and after getting permission from the Appellate Court the committee consisting of the appellant and the three respondents shall select qualified person to be appointed in accordance with the provisions contained in the Kerala Education Act and the Rules framed thereunder. That committee will be presided over by a Senior Counsel appointed by the court. It is open to both sides to file a panel of lawyers who is to be appointed as the President of the committee and this court will appoint one among them as the President. The honorarium to paid to the president will be decided later. Initially, the selection of teaching and non-teaching staff will be made only by the members of the committee which is convened for that purpose by the President. If the appellant and respondents are unable to agree, the President shall report the matter to the court and thereafter the President will also be given power to take a decision in the selection process. The Manager shall make appointment from the list of such persons selected by the committee in accordance with law.

2. Paragraph 8 extracted above opens by saying that the power of appointment is vested with the Manager. It is after observing so, the learned District Judge directed constitution of a committee consisting of the petitioner and the three respondents for selection of persons for being appointed as teaching staff and non-teaching staff. In the last portion of the above paragraph it is stated that the persons selected by the committee which will be presided over by a Senior Counsel appointed by the court, will be appointed by the Manager. The direction that the manager has to make appointment is seen to have given by the appellate court for the reason that the Manager is the appointing authority. What has to be understood from the directions given by the learned District Judge is that the right of selection of persons to be appointed as teaching and non-teaching staff is taken away from the Manager and that is given to a committee and the right of issuing order appointing teaching and non-teaching staff alone is given to the Manager.

3. It is not disputed that at present the petitioner is the manager approved by the educational authorities. According to the petitioner, since she is the manager approved by the educational authorities she has the right to exercise all powers of the manager unless and until she is removed from the post of Manager. In the order against which this revision is filed, the learned District Judge also says that the petitioner is the Manager approved by the Educational Authority and that she is the appointing authority. A reading of the order would go to show that on pointing out the decision reported in 1960 KLT 803 (*Eipe v. Koshy*), the learned District Judge observes that the Manager is the legally authorised delegate of the educational agency and on the appointment of Manager by the educational agency the power of the agency becomes vested in the Manager. The directions in the judgment have been given by the learned District Judge after making the above observations regarding the position and power of the Manager of an aided school.

4. The argument advanced by the learned counsel appearing for the petitioner is that under Sec.33 of the Kerala Education Act, civil court is not having the power to grant any temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under the Act. A reading of the above section would make it clear that the prohibition in that section is against the granting of temporary injunction and making any other interim order. Citing the decision reported in 1990 (2) KLT 904 (*Damodaran v. Vasudevan*), the learned counsel appearing for the petitioner would maintain that appointment of a teacher or appointment of non-teaching staff in an aided school is a proceeding under the Act which is controlled by the Act and the Rules. In the above decision, in para. 12 it is stated that so long as a Manager has not been found unfit to hold the office of the Manager, he is competent to appoint teachers or Head Master of the school and that such action taken or proposed to be taken by the Manager cannot be prevented by an order of temporary injunction or any other order of interim nature. Even though it could be seen from the above decision that appointment of teachers etc or Headmaster of an aided school is a proceeding under the Act as is mentioned in Sec.33 of the Kerala Education Act, the power of the civil court to grant any temporary injunction or to make any interim order restraining any such person alone is taken away. A copy of the order of the trial court is made available for perusal and it is seen from the decretal portion of the order that a decree for permanent injunction was passed. An attempt has been made by the learned counsel appearing for the petitioner to point out that even though the statement in the decretal portion is that a decree for permanent injunction was granted actually the injunction granted is of a temporary nature. What he would say is that the injunction is intended to be in force as per the preliminary decree, till the scheme is framed. But a reading of the order would go to show that the intention of the court was to grant a permanent injunction and since what is granted is not a temporary injunction, it cannot be said that there is bar under Sec.33 of the Kerala Education Act for granting such an injunction.

5. The question to be considered is whether there is any illegality or irregularity in the order passed by the learned District Judge. After finding that the petitioner is the Manager of the school and that she is the appointing authority in respect of the teaching as well as non-teaching staff in the school, the right to select persons who have to be appointed to the above posts is taken away from the petitioner, the Manager. Unless and until the petitioner is removed from the post of Manager of the school she alone has the power to make appointments in the school. When it is said that the power to appoint a person to a post is vested with an authority that power takes in the power to make selection also. A reading of Sec. 11 of the Kerala Education Act would make it clear that the selection of a person to be appointed as teacher in an aided school has to be made by the Manager. So the right of the Manager to make selection of persons to be appointed and to issue orders appointing them as staff cannot at all be disputed.

6. The learned counsel appearing for the respondents would point out Rule 1 in Chapter III of the Kerala Education Rules where it is said that Private Educational Institutions may be classified into two categories, viz. (i) those under individual Educational Agency and (ii) those under Corporate Educational Agency. In the same Rule it is stated that Corporate Education Agency shall include cases where the right is vested in (a) two or more persons jointly with written registered agreement, (b) a Board or Society or Association or Company or institution registered under a statute, (c) an institution of Trust, and (d) an ecclesiastical office of any religious denomination. Rule 2 of Chapter III says that in the case of institutions under Corporate Educational Agency, the constitution of the Educational Agency to the extent and in so far as it relates to the management of any school must be subject to rules approved by the Director. Here it is said that since now more than one person is having right over the school, it has to be treated as an institution which is owned by a Corporate Educational Agency. Even though the position is what has been stated above, the petitioner now continues to be the Manager. In the decision reported in 1990 (2) KLT 904 (Damodaran v. Vasudevan), it is observed that so long as the Manager is found unfit to hold the office of the Manager he is competent to appoint teachers and the Headmaster of the school. In para. 12 of the above judgment of this court it is said that so long as a Manager is not removed in accordance with the provisions of the Act and the Rules, he is entitled to function as Manager. It is also stated in the above judgment that the above functions cannot be restrained by means of injunction by civil court even though the assets of the school are partible in a civil court. Such observations were made by the court when interpreting Sec.33 of the Kerala Education Act and deciding the question whether interim injunction can be granted or not. But the position is that a manager of the school whose appointment is approved by the Educational Authority has the right to continue in office and discharge the functions and exercise the powers of the Manager till he is removed from his office as Manager. The legality of the directions given by the learned District Judge in the impugned order has to be considered by bearing in mind the above facts. As stated earlier, the power of selection of persons to be

appointed as teaching and non-teaching staff is taken away by the directions given by the learned District Judge and the petitioner is given the only power to issue orders appointing persons to the above posts. Such a direction given by the learned District Judge does not appear to be correct. The permanent injunction given by the trial court is restraining the petitioner hereinfrom making any new constructions in the plaint schedule properties and also from making any new appointments in the school (teaching or non-teaching staff). In respect of the constructions proposed to be made, there is a direction by the appellate court that a petition seeking permission for making new constructions has to be filed in the appellate court and the appellate court will consider and decide whether permission should be granted or not. No modification of the above direction is sought for at present. That direction will be there and if construction has to be made, permission of the appellate court has to be obtained as stated in the order of the appellate court. The directions given by the appellate court contained in para.8 of the order has to be modified. The power of appointing teaching and non-teaching staff in the school will be with the revision petitioner. The direction to constitute a committee for making selection of persons to be appointed as teaching and non-teaching staff has to be vacated. The operation of that part of judgment which granted permanent injunction restraining the present revision petitioner from making any new appointment in the school (teaching and non-teaching) has to be stayed.

In the result, this revision is disposed of vacating the direction in the order of the learned District Judge constituting a selection committee. The right to select and appoint teachers and members of non-teaching staff will be with the revision petitioner. The direction in the order of the learned District Judge regarding permission to be obtained from the appellate court for making construction will remain unaltered. The operation of that part of the judgment of the trial court granting permanent injunction restraining the petitioner from making any appointments in the school (teaching and non-teaching staff) will stand stayed till the disposal of the appeal. It is made clear that this order will not stand in the way of the respondents moving the appropriate authority for removing the petitioner from the office of the Manager of the aided school.