
(1953) 06 KL CK 0001
In the High Court Of Kerala
Case No : C.R.P. No. 1111 of 1123 (Tr)

Kora Ithack

APPELLANT

Vs

Skaria Kuruvilla and Others

RESPONDENT

Date of Decision : 18-06-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 72, 73, 89

Citation : AIR 1953 Ker 535

Hon'ble Judges : V.S. Subramanya Iyer, J;G. Kumara Pillai, J

Bench : Division Bench

Advocate : M.U. Isaac, for the Appellant; K.P. Abraham, for the Respondent

Judgement

Sankaran, J.—By this revision petition Defendant 2 in O.S. No. 31 of 1118 on the file of the District Court of Parur has invoked the revisional jurisdiction of this Court for quashing the order passed by the District Court that the suit is maintainable even without the sanction as required by Section 72, Travancore CPC which was in force at the time of the institution of the present suit.

Plaintiffs have instituted the suit on behalf of the Vatakara Jacobite Christian Church at Koothattukulam in Muvattupuzha Taluk. The main reliefs claimed are that Defendants 1 to 3 who are in charge of the management of the affairs of the Church as its Kaikars may be removed from office, that they may be called upon to render accounts for the period of their management and that Plaintiffs may be appointed as the Kaikars to manage the affairs of the church and that a scheme may be prepared for its proper management. Among the several contentions raised by Defendant 2 one is about the maintainability of the suit. According to him the plaintiff church is a public trust and, therefore a suit instituted without obtaining the sanction contemplated by Section 72 of the Travancore CPC is not maintainable.

The Plaintiffs maintained that the trust is only a private trust and that, as such the sanction contemplated by Section 72, Travancore CPC is not necessary. After

taking some evidence on the question as to the nature of the trust the lower Court considered the question of the maintainability of the suit as a preliminary issue and recorded a finding that the plaintiff trust is a public trust. At the same time it was held that the suit is maintainable even without the sanction as required by Section 72, Travancore Code of Civil Procedure

The revision petition is directed against this order. The Plaintiffs Respondents have filed an objection memorandum challenging the correctness of the lower Court's finding that the plaintiff trust is a public trust.

2. We can interfere with the order of the lower Court at this stage only if it is found that the order is one which attracts the revisional jurisdiction conferred on this Court. Now that the Travancore CPC has been replaced by the Indian CPC the revisional jurisdiction that this Court can exercise at the present day is Subject to the limitations imposed by Section 115, Indian Code of Civil Procedure.

That section runs as follows:

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity

the High Court may make such order in the case as it thinks fit.

The power of revision that had been conferred on the High Court by Section 89, Travancore CPC was very much wider in its scope. That section provided:

The High Court may call for the record of any case decided in any Court subordinate thereto, in which no appeal lies, for the purpose of satisfying itself as to the legality of any judgment, decree or order passed therein and as to the regularity of any proceedings of such inferior Court, and pass Such order in the case as the High Court thinks fit.

Since this section is no longer in force the High Court cannot take advantage of the wide latitude that had been allowed by that section in the matter of revising the orders of subordinate Courts. On the other hand the revisional jurisdiction has to be strictly confined to the limits as prescribed in Section 115 of the Code now in force.

3. In passing the impugned order the lower Court cannot be said to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested. The objection that the suit is not maintainable without the sanction as required by Section 72, Travancore CPC was specifically raised before the lower Court and it is obvious that such an objection was raised on the

strength of Section 73 which stated that no suit claiming any of the reliefs specified in Section 72 shall be instituted except in conformity with the provisions of that section. This objection was duly considered and overruled by the lower Court.

It cannot, therefore, be said that in passing such an order the lower Court has overlooked the provision contained in Section 73. It may be that the conclusion arrived at the lower Court is wrong and unsustainable. But that will not mean that in passing such an order the lower Court has acted illegally or with material irregularity in the exercise of its jurisdiction so as to bring the matter under Clause (c) of Section 115, Code of Civil Procedure

Where the subordinate Court has passed a wrong order, which does not come within Clauses (a), (b) or (c) of Section 115 the normal remedy of the aggrieved party is to challenge that order in an appeal that may be preferred against the order where it is an appealable order and in other cases in the regular appeal that may be preferred against the ultimate decree passed in the case.

4. In the present instance the correctness or otherwise of the order passed by the lower Court has to be tested in the light of the finding on the question whether the plaint trust is a public trust or only a private trust. This is a question of fact and the lower Court's finding that the trust is a public trust is challenged by the Plaintiffs. This Court cannot exercise its revisional jurisdiction in considering the correctness of the finding on the question of such a fact and without finally deciding that question of fact one way or the other; the question of, law raised by Defendant 2 that the suit is not maintainable without the sanction as provided for in Section 72, Travancore CPC cannot also be gone into.

Thus it follows that in any view of the matter there is no justification for this Court to interfere at this stage with the lower Court's order in the exercise of this Court's revisional jurisdiction and that the revision petition has only to be dismissed. We wish to make it clear that the order dismissing the civil revision petition as unsustainable does not and cannot mean that we are upholding the lower Courts order as correct.

5. Subject to the observations made above this civil revision petition is dismissed. But we make no order as to costs.