

(2018) 03 KL CK 0035

In the High Court Of Kerala

Case No : Original Petition (Civil) No. 609 Of 2018

Melvin Joseph And Anr @APPELLANT@Hash Jayanandakumar

Date of Decision : 01-03-2018

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2018) 03 KL CK 0035

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : R.S.Kalkura, M.S.Kalesh, Harish Gopinath, R.Bindu, P.Anjana, Salil Narayanan, Surya Binoy, M.I. Johnson

Final Decision : Disposed Off

Judgement

1. The prayers in this Original Petition (Civil) filed under the enabling provisions contained in Art.227 of the Constitution of India are as follows:

"i. Call for the records leading to Exhibit P-5 order and set aside the same.

ii. Allow Exhibit P-3 application numbered as I.A.No.4507 of 2016 in O.S.No. 827 of 2016 on the files of the Hon'ble Additional Munsiff Court, Kollam."

2. Heard Sri.R.Nikhil, learned counsel appearing for the petitioners/defendants. In the nature of the order that is proposed to be passed in this petition, notice to the respondents/plaintiffs will stand dispensed with.

3. The petitioners herein are the defendants in O.S.No. 827/2016 on the file of the Addl. Munsiff's Court, Kollam. The said suit has been filed by the respondents herein/plaintiffs claiming to be the President, Secretary and committee member of the Bharana Samithi of Pezhumthuruthu Ottaplavila Sree Bhadra Devi Kshethram, in terms of committee decision rendered on 15.6.2016. The gist of the plaint averments is that on 15.6.2016, defendants 1 to 5 along with henchmen, had allegedly trespassed into the 1st plaintiff's property and broke open the kshethram kanicka vanchi and appropriated the amounts from it. The defendants further put a new lock to the office room, about which the 3rd plaintiff informed the East Kallada Police Station and filed a complaint in that

regard. But that due to the political influence of the defendants, the local Police failed to initiate appropriate proceedings based on the complaint. That then defendants 6, 7 and 8 have instigated the other defendants to cause obstructions in the management of the temple and created hindrances to the day to day affairs claiming that they are the office bearers of the kshethram. That the defendants are not the office bearers of the 1st plaintiff kshethram and do not have the authority to manage the kshethram and so the above mentioned suit was filed for declaring that the managing committee prevalent during January 2016 is legally entitled to manage the 1st plaintiff kshethram and consequently, they seek a permanent prohibitory injunction to restrain the defendants from disposing any asset of the 1st petitioner kshethram and from breaking open the almirah locker and from disposing the 587 items of gold articles kept in the locker placed in the office of the 1st plaintiff Kshethram.

4. It is further averred that the petitioners herein had filed written statement contending that that the committee headed by the plaintiffs were removed and a new Bharana Samithi was duly elected consisting of seven members to conduct the election of the new Bharana samithy. That the newly elected sub committee meeting held on 05.06.2016 elected the new office bearers and that such newly elected office bearers have assumed office immediately after the election and that they are administering the temple affairs in most efficient, legal and transparent manner, etc., it is stated. That since the new committee has taken charge, it is highly essential for them that the almirah has to be opened since the documents relating to the day-to-day affairs are there in the almirah. Hence the petitioners have filed Ext.P-3 application as I.A.No.4507/2016 in the above O.S. before the trial court seeking a direction for appointment of an Advocate commissioner to open the almirah and prepare an inventory. Ext.P-4 objections have been filed by the respondents/plaintiffs to Ext.P-3 I.A. That the court below without proper application of mind and without properly evaluating the essential elements has passed a non-speaking order as per the impugned Ext.P-5 order. It is stated that the court below has suo motu reviewed Ext.P-5 order dated 16.1.2018 and had later confirmed Ext.P-5 on 16.1.2018 as is referred to in proceedings for 16.1.2018 endorsed in Ext.P-6 B diary proceedings of the trial court in relation to the abovesaid suit. The proceedings as entered in Ext.P-6 B diary proceedings on 16.1.2018 are as follows:

"The case is advanced to this day suo motto. The order dtd.11.1.18 is reviewed. The I.A. No. was mistakenly entered. It was an inadvertent mistake occurred while writing the I.A. Hence for clarification the above order is reviewed. IA 4507/16 stands dismissed. IA 4060/16 shall be heard along with the suit. Separate order is appended with . For further steps 15.2.18."

The further entry on 15.2.2018 in Ext.P-6 B diary proceedings is as follows:

" Plaintiff represented. Defendant represented. For further steps on 22.5.18."

4. It is now pointed out by the petitioners' counsel that I.A.No. 4060/2016

referred to in the proceedings dated 16.1.2018 in Ext.P-6 B diary proceedings is an application filed by the respondents herein/ plaintiffs seeking appointment of receiver and the said application has now been posted to 22.5.2018 along with the suit. It is thus pointed out that impugned Ext.P-5 order dated 16.1.2018 has been reviewed and confirmed on 16.1.2018. The impugned Ext.P-5 order dated 1.1.2018 reads as follows:

"ORDER

This petition is filed to appoint an Advocate Commissioner to make an inventory of articles kept in the Almarah, that is kept in the office of the temple Administrative Committee and to bring the whole thing into the court.

2. As the articles kept in Almarah could be valuables, and are of daily use and hence it is possible to cease and to keep in court. In the above circumstance, the petition cannot be allowed.

Hence the petition is dismissed."

5. It appears from a reading of Ext.P-6 B Diary proceedings dated 16.1.2018 that the said impugned order dated 11.1.2018 has been reviewed suo motu and confirmed on 16.2.2018.

6. The petitioners have raised various contentions in aid of their submission that Ext.P-5 order is illegal and wrong and further that it is vitiated solely on account of non-application of judicial mind. The petitioners have made various submissions and contentions in aid of their prayer in Ext.P-3 I.A., as can be seen from a reading of the affidavit which accompanies Ext.P-3. They have made averments that subsequently, a new election was conducted and the new elected members have assumed charge and this warrants grant of the prayer as averred. None of the abovesaid aspects as to the new situation as projected in Ext.P-3 affidavit regarding the alleged new election of the office bearers, etc. has not even been remotely adverted to and considered by the court below concerned. Even none of the objections raised by the respondents/plaintiffs in Ext.P-4 objections filed in Ext.P-3 I.A. has even been remotely adverted to and considered by the court below concerned. The main reasoning given by the trial court in Ext.P-5 order is that the articles kept in the almirah could be valuable and are of daily use and hence it is possible to "cease" and to be kept in court. As to what exactly is meant by the expression hence it is possible to "cease" which is presumably used in relation to the valuable articles is not known to this Court and this Court is not in a position to fathom the meaning and scope of that expression employed by the learned Munsiff in Ext.P-5 order. Further if the articles kept in the almirah are valuables, as suggested by the trial court, how it would be better and safe to keep in the court's custody, is also not known to this Court and whether the court below has got sufficiently safe almirah to keep such valuables safely and whether there is adequate security for such purpose, etc. are not known to this Court. Moreover, even from a reading of Ext.P-4 objections filed by the respondents herein it is not seen that the said parties have even

raised remotely a contention that the valuables in the almirah should be kept in the safe custody of the court. If actually the articles in the almirah are valuables, which are kept for the daily use in the temple, then it is not known as to the relevance and the logic in the finding of the Munsiff that it should be kept in the court's custody. The petitioners would contend that the valuable ornaments are required for the ritualistic worship process in the temple. But the interesting aspect is that even the petitioners only sought for a limited direction that the inventory of the said articles should be made by the Advocate Commissioner. But over and above all, none of the aspects urged by the either by the petitioners or by the respondents either in Ext.P-3 I.A. or in Ext.P-4 objections has even been remotely adverted to and considered by the trial court. Therefore, ex facie Ext.P-5 order is vitiated by non application of judicial mind and non inadvertence and non-consideration of relevant aspects of the matter. Therefore, obviously, the matter requires a remit to the trial court for a serious reconsideration at the hands of that court. For such a remit, it is not necessary to issue notices to the respondents, as those parties would be heard consequent to the remit. For facilitating such a remit, it is ordered that the impugned Ext.P-5 order dated 1.1.2018, as confirmed in the review order dated 16.1.2018, will stand set aside. Consequently, the I.A. which has been rejected in Ext.P-5 will stand restored to the trial court concerned. The trial court will hear both sides afresh and will advert to all the contentions of the respective parties and then pass a reasoned order so that none of the parties can impugn the said order, as being a non-speaking order, which is vitiated by non-application of judicial mind. A well reasoned order should be passed by the trial court after hearing both sides as directed herein above. Necessary orders in this regard should be passed by the court without much delay, preferably well before the court closes for Summer Vacation 2018 in the second week of April, 2018. The petitioners will produce a certified copy of this judgment before the court below concerned for necessary information. With these observations and directions, the Original Petition (Civil) stands finally disposed of.