
(2014) 01 KL CK 0112

In the High Court Of Kerala

Case No : Appeal Against the Order in I.A. 958 of 2013 and O.S. No. 3 of 2013

Oorazhma Devaswom Board

APPELLANT

Vs

Brahmadathan Namboothiri and Others

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141 47

Citation : (2014) 1 ILR 592 : (2014) 1 KHC 383 : (2014) 1 KLJ 486

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : T. Sethumadhavan and Sri C. Harikumar, for the Appellant; K.P. Satheesan , Sri S. Sanal Kumar, Smt. Bhavana Velayudhan, Smt. T.J. Seema, Sri N.K. Subramanian and Sri S. Ananthakrishnan, for the Respondent

Final Decision : Allowed

Judgement

S.S. Satheesachandran, J.—Appellant is the first defendant in O.S. 3/2013 on the file of Additional District Judge II, Alappuzha. Appeal is directed against the order dated 6-12-2013 passed by the learned Additional District Judge allowing an application for injunction moved by plaintiffs in the suit.

2. Short facts necessary for disposal of the appeal can be summed up thus:--Suit was instituted by respondents 1 to 5 together, hereinafter referred to as plaintiffs, u/s 25 of the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act 12 of 1955) for framing a scheme for administration of a society registered under the above Act and for other reliefs. Case of plaintiffs in brief was that they are Oorazhma right holders of a temple, namely, Thiruvampadi Sreekrishnaswami temple. That temple is situated in 4.35 acres of land in survey No. 600/8 of Pazhaveedu Village, Alappuzha. Temple and its property are owned by five illoms and members of those illoms are the hereditary right holders (Oorazhans of the temple). Oorazhans have formed a trust, namely, Thiruvambadi Sree Krishna Swami Kshetra Trust, hereinafter referred to as temple trust, which is the fourth defendant in the suit. In a general

body meeting of the temple trust convened by all Oorazhans of five illoms in 1998 it was resolved to form a society. Accordingly society was registered under Act 12 of 1955 and it consisted of 35 members. Except the third plaintiff all other plaintiffs are founder members of the society. Some persons connected with temple trust entered into an agreement with first defendant for entrusting the management and administration of temple to that defendant, and, later, some collusive suits were filed as between first defendant and defendants 2 and 3, who represented the Kshetra Samithi. Under the guise of a collusive decree obtained in one of such suits and in execution of that decree attempts are now being made to take over the possession and management of temple, was the case of plaintiffs to seek for a decree for framing a scheme for the administration of temple and other reliefs. Other reliefs canvassed included a declaration that decree obtained by first defendant in the previous suit against second and third defendant, viz. O.S. 295/2002 of Munsiff Court, Alappuzha is a collusive decree not binding on fourth defendant, and it is a nullity, that the agreement entered by fourth defendant with first defendant over transfer of administration of temple to first defendant is null and void and not binding on temple trust, and also for a decree of prohibitory injunction restraining defendants 1 to 3 from interfering with the administration of Sree Krishna Swami Temple and its assets. Along with the suit plaintiffs moved an application for interim injunction to restrain defendants 1 to 3 from interfering with the administration of temple and its properties, conduct of rituals and festivals and also day to day management of temple by fourth defendant till disposal of the suit That application for injunction was resisted by first defendant alone, filing objections. The other counter petitioners in that application, defendants 2 to 4 in the suit, appeared through counsel in response to notice given, but did not raise any objection. First defendant contended that it is a registered board which has been carrying on administration and management of more than 170 employees including Thiruvambadi Sree Krishna Kshetra Samithy temple. Administration and management of the temple was handed over to this defendant under a registered deed in 2002 by fourth defendant temple trust. Since there was some obstruction from some persons claiming as members of temple advisory committee this defendant had instituted a suit as O.S. 295/2002 before the Principal Munsiff Court, Alappuzha for a decree of injunction. Two other suits were filed by the Temple Advisory Committee against this defendant and others, one of them for a decree of injunction and the other impeaching the registered document by which fourth defendant temple trust handed over the administration and management of temple to this defendant. Those two suits viz., O.S. 227/02 and 485/02 were tried along with the suit filed by this defendant viz., O.S. 295/02, and under the common judgment passed suit of this defendant was decreed and other two suits were dismissed. Decrees passed by trial court in the suits as aforesaid challenged in appeals were affirmed dismissing those appeals. This defendant initiated execution proceedings against the defendants in O.S. 295/02, and in such proceedings first plaintiff in the present suit moved an application claiming himself as the President of the temple trust, and second and fifth plaintiffs,

separately, two separate applications, all of them resisting the execution of decree on one or other ground. Those applications with the execution petition were dismissed, and against the dismissal of execution petition this defendant filed an O.P. before this Court. In the light of the observations/directions given in the judgment rendered in the O.P. this defendant filed a fresh execution petition, and, under orders passed by the Munsiff decree had been executed and execution petition was closed as satisfied. Thereafter first plaintiff as president of temple trust has moved two applications before the execution court u/s 47 of the CPC and those applications are even now pending. Suppressing the above facts present suit has been filed and interim injunction is applied for, is the case of this defendant contending that it is administering and managing the temple in accordance with the registered agreement entered with temple trust and getting delivery of temple properties in execution of the decree in O.S. 295 of 2002.

3. Learned District Judge appreciating the claim for interim injunction by plaintiffs with reference to the objections raised by first defendant/appellant and also the documentary materials produced by both sides, has come to the conclusion that appellant does not have any interest over the property of temple and its administration, and plaintiffs have succeeded in establishing a prima facie debatable case for the discretionary relief of injunction. In that view of the matter allowing the application of plaintiffs order of interim prohibitory injunction was passed restraining defendants 1 to 3 or any person claiming under them from interfering with the administration of temple and its properties, conduct of rituals and festivals and also day-to-day management of the temple by the temple trust till disposal of the suit.

4. I heard the counsel on both sides. Learned counsel appearing for appellant/first defendant relying on Ext. P-2, copy of the registered deed by which administration and management of temple was handed over to first defendant by temple trust, the decree passed in its previous suit and also the applications moved by some of the plaintiffs in the execution proceedings of that decree, contended that the suit and the injunction are totally misconceived and the order of injunction passed by District Judge is patently unsustainable in law and facts. On the other hand, counsel appearing for respondents 1 to 5 (plaintiffs) and also counsel who appeared for additional 8th respondent, temple trust, advertent to various aspects involved in the case contended that the order of injunction passed by District Judge does not suffer from any infirmity and there is no merit in the appeal challenging that order.

5. After hearing the counsel on both sides and taking note of the facts and circumstances and the materials produced, copies of which were made available for my perusal, I find some crucial aspects presented have a direct bearing over the claim of injunction canvassed by plaintiffs. Temple and its properties belonged to five illoms and the trust formed by them (4th defendant) entrusted administration and management of the temple executing Ext. P-2 registered agreement in favour of first defendant. First defendant, a board is a registered

organisation, which, ever since its inception, is administering and managing several temples in the State. After execution of Ext. P-2 agreement in its favour by Oorazhans of the temple questioning that agreement and also the right of first defendant to assume management some litigations commenced, and three such suits, one of them by the board as plaintiff, ultimately ended in favour of first defendant. Two of the above suits were filed by the temple advisory committee against the board and others, and, in one of them temple trust (fourth defendant) was one among the defendants. Though temple trust was declared ex parte in the above suit, it is seen, in the appeal filed against the decree of dismissal of that suit, fourth defendant had also appeared through counsel. Appeals against the common judgment rendered in the suits were decided in favour of present first defendant. Mainly attacking the decree passed in O.S. 295 of 2002, which had been instituted by first defendant as plaintiff against the temple advisory committee, and, challenging it as collusive decree, the present suit has been filed by some persons claiming to be the members of a society which had been formed on a decision taken in the general meeting of the temple trust. Injunction applied in common against defendants 1 to 3 is for "restraining them from interfering with the administration of Thiruvambadi Sreekrishna Swami temple and its properties and the conduct of rituals and festivals and also the day to day management of the temple by the fourth defendant, pending disposal of the suit". So, for and on behalf of fourth defendant, temple trust, plaintiffs claiming to be a members of a society registered under Act 12 of 1955, have instituted the suit and sought the interim relief as indicated above. In the suit for framing a scheme for the Society, which is the main relief canvassed, other than allegations of attempts by third parties to usurp the administration and management of temple, and obtaining collusive decree by them for that purpose, nothing more is mentioned why the present scheme governing the society is found to be inadequate or insufficient. Society was registered in 1998. Ext. P-2 agreement was entered in 2002 by the temple trust in favour of first defendant for administering and managing the temple. Society did not come into picture till the three suits referred to earlier culminated in favour of first defendant and, in fact, till completion of the execution proceedings initiated by first defendant against the judgment-debtors in the decree passed in its suit. Society has filed the suit and application for injunction to enable fourth defendant temple trust, to administer and manage the temple, is a tell-tale circumstance showing prima facie no discretionary relief as canvassed of could have been granted by the court in its favour. Fourth defendant, temple trust, which under the suit and interim injunction, is to be allowed to administer and manage the temple, has not even filed a statement claiming that it is administering and managing the temple. The temple trust as per the terms of Ext. P-2 agreement has already handed over administration of temple to first defendant. When temple trust a party in one of the previous suits jointly tried with two other suits cannot impeach the decision rendered in such suits society registered under that trust, much earlier to Ext. P-2 agreement, prima facie, cannot impeach validity of the decree obtained in such suit as a collusive decree.

May be on the submissions made and facts presented, there is reason to suspect that under the decree of injunction obtained in O.S. 295/02, first defendant in execution had taken steps to take over the management and administration of temple, which has not been granted in the decree put in execution, a decree for prohibitory injunction against the temple advisory committee and some of its members. If at all there was excess execution of such decree by first defendant, that of course is a matter to be enquired into and decided by execution court concerned on any application made thereof. Excess execution of decree, even if that be so, by first defendant would no way confer empowerment on plaintiffs to impeach the decree passed in O.S. 295/02 as a collusive decree, nor enable them to institute a suit to protect the interest of the fourth defendant, temple trust, when the decision rendered in that suit is binding on that trust also.

6. Learned District Judge has summarised the points canvassed by plaintiffs for the discretionary relief applied of in paragraph 11 and the objections of 1st defendant in paragraph 12 of the Order. Appreciating the rival case presented by the parties with reference to the materials tendered he has answered them against first defendant and in favour of plaintiffs, to pass the order impugned in the appeal. The last point framed taking note of plaintiffs' case to impeach the decree passed in the previous suit, challenges against Ext. P-2 registered agreement, and other circumstances canvassed of (9th point in paragraph 11 of the Order) reads thus:

The lower court in execution of the decree in O.S. 295/02 dispossessed the plaintiffs and the 4th defendant from the temple who are not parties to the suit under the guise of the permanent prohibitory injunction which is not against either the plaintiffs or the 4th defendant. The first defendant in collusion with 2nd and 3rd defendant took forcible possession of the temple properties under the guise of execution of the said decree and thereby dispossessed the plaintiffs and 4th defendant.

Plaintiffs have no case that forcible dispossession occurred otherwise after institution of the suit whether it be in execution of a decree or otherwise. When that be so, that should have cautioned the District Judge that the preventive relief of prohibitory injunction canvassed by plaintiffs was not allowable in the case. No case has been made out, nor any relief claimed, for interim mandatory injunction for restoring possession to plaintiffs or 4th defendant from the first defendant. In such a case, the order of interim injunction passed by the district judge can be given effect to only by dispossessing first defendant which has allegedly taken over possession and management of temple in execution of a decree. An order of injunction is passed to maintain status quo, to preserve the subject-matter till adjudication of disputes between the parties. If one of the parties by mischief has taken forcible possession and then continues in possession, if that state of affairs commenced before lis came before court, a prohibitory order of injunction against him, that alone, would serve no purpose, and court cannot pass any such order. If any case is made out for interim

mandatory injunction, of course, it can pass appropriate orders to meet the ends of justice to safeguard the subject-matter involved till adjudication is over. Where the very case canvassed by plaintiffs has shown that there was dispossession of plaintiffs and fourth defendant from temple in execution of the decree passed in O.S. 295/02 the application moved by plaintiff for interim prohibitory injunction to enable the fourth defendant to administer and manage the temple without interference from first defendant could not have been entertained. If first defendant has already come into administration and management of the temple, whether it be in execution of a decree or otherwise before institution of the suit, without seeking an interim order of mandatory injunction and passing of appropriate orders thereof by the court it cannot be divested of such management.

7. In the order under challenge learned district judge has entered findings on ten questions framed for consideration and disposal of the interlocutory application. He has entered categorical findings on many of the questions raised, which, in fact, is outside the scope of an interlocutory application for injunction. Parties have not been given opportunity to substantiate their respective case and that stage will come only after issues are settled on the pleadings and trial conducted in the case. At this stage, where one of the parties sought for the discretionary relief of injunction, with reference to objections canvassed by opposite party and other materials produced by both sides, the only question to be considered is whether a prima facie case has been made out for the grant of such relief. Determination of prima facie case may call for looking into in whose favour the balance of convenience is available and also the irreparable injury, if any, to be suffered by one or other party by the grant or refusal of injunction. Conclusive findings on questions arising on disputes of parties cannot be made while determining an application for injunction, and inquiry must be only to determine whether a prima facie case has been made out or not for the grant of discretionary relief applied for. Findings made by the District Judge on questions raised, and even raising of such questions for consideration of the application for interim injunction, were uncalled for. I make it clear that the observations/findings made on the questions raised in the order should no way influence or cause any prejudice to the parties in further proceedings of the case.

8. Order of injunction applied for by plaintiffs is prima facie shown to be for and on behalf of temple trust (fourth defendant) which is bound by the decision in O.S. 295/02 and also by Ext. P-2 agreement entered with first defendant. Challenges raised against the decree in the above suit as a collusive decree by plaintiffs cannot be accepted on face value. They have not challenged Ext. P-2 agreement, and some of them were parties in one or the other suit jointly tried with O.S. 295/02. Some of the plaintiffs have even moved applications in the execution proceedings arising from the decree passed in O.S. 295/02. If there was excess execution of that decree remedy of the parties is to approach the execution court for setting right whatever mischief committed in execution of the decree. Further more, on the facts presented how far a society registered under

the trust, which is continuing as such, could impeach a decree binding on the trust filing a suit u/s 25 of the Act is also a serious question to be probed in the case. Section 25 of the Act contemplates intervention by the court subject to satisfaction of the conditions for entertaining an application/suit thereunder. That application/suit can be entertained only on certain contingencies like removing the existing governing body and appointing a fresh governing body, or framing a scheme for the better and efficient management of the society, or dissolving the society. An application/suit is instituted by 10 per cent of the members of the society for framing a scheme, cannot be the basis for entertaining the proceeding. Discretionary reliefs canvassed in the present suit, normally, are also outside the scope and ambit of Section 25 of the Act. An application for interim injunction against the opposite party in such proceedings can be entertained, but, only in exceptional cases, taking note that the proceedings are governed by Section 141 of the Code of Civil Procedure. Entertainability of the application/suit u/s 25 of the Act having regard to the facts of the case has necessarily to be examined at the appropriate stage, and it cannot be decided solely on the basis that it has been filed by 10% of the members of the society.

In the light of the discussion made, and on the facts and circumstances presented, I find that the Order passed by the district judge granting injunction to plaintiffs cannot be sustained. Interim order of injunction is vacated, and, the application for injunction shall stand dismissed.

Appeal is allowed directing both parties to suffer their respective costs.