
(2021) 10 KL CK 0019

In the High Court Of Kerala

Case No : Regular Second Appeal No. 562 Of 2021

Penthacost Mission

APPELLANT

Vs

Thankamma

RESPONDENT

Date of Decision : 05-10-2021

Acts Referred:

Specific Reliefs Act, 1963 — Section 41(h)
Code of Civil Procedure, 1908 — Section 91, 100

Citation : (2021) 10 KL CK 0019

Hon'ble Judges : N.Anil Kumar, J

Bench : Single Bench

Advocate : Mathew B. Kurian K., T.Thomas, Baijuraj

Final Decision : Dismissed

Judgement

N.Anil Kumar, J

1. This Regular Second Appeal is directed against the judgment and decree dated 30.1.2021 in AS No.49/2016 of Sub Court, Kottarakkara (hereinafter referred to as the "First Appellate Court") arising from the judgment and decree dated 29.6.2016 in OS No.569/2013 of Munsiff's Court, Kottarakkara (hereinafter referred to as the "trial court").

2. The unsuccessful defendants in both the courts below filed this Second Appeal against the concurrent judgments of the courts below restraining defendants 5 and 6 from issuing licence to defendants 1 to 3, so as to use plaint B schedule property as a cemetery or burial ground by way of decree or permanent prohibitory injunction.

3. The plaintiff filed the suit before the trial court alleging that the defendants are making attempts to construct a vault in the plaint B schedule property violating the provisions contemplated under the Kerala Panchayat Raj (Burial and Burning Ground) Rules, 1988 (for short "the Rules").

4. The plaintiff is the owner of plaint A schedule property as per sale deed No.2221/1984. Her husband is no more and she has been residing in the plaint A schedule property along with her two daughters. The property on the Northern side of the plaint A schedule property originally belongs to one Kunjurama, who sold an area of 2.02 Acres of her property, which is on the North-Western portion of the plaint A schedule property, to the first defendant. The first defendant is Penthacost Mission, represented by its Central Pastor at Kottarakkara. The first defendant's property is scheduled as the plaint B Schedule. According to the plaintiff, the defendants are attempting to convert the property into a burial ground against the Rules. It is stated that, in case, a burial ground is constructed in the plaint B schedule property, the seepage of water from the plaint B schedule property will pollute the well in the plaint A schedule property and as also nearby wells. Hence, the suit was filed for permanent prohibitory injunction restraining defendants 1 to 3 from converting the plaint B schedule property as a cemetery or as a burial ground.

5. Defendants 1 to 3 filed written statement contending that the plaint B schedule property was purchased by the first defendant as per Ext.B1 sale deed for the believers of the church. They admitted that they had purchased the plaint B schedule property for the purpose of commencing a burial ground. They also stated that not less than 17 dead-bodies were already buried in the said property.

6. During the trial of the case, PWs 1 to 5 were examined on the plaintiff's side and marked Exts.A1 and A2 documents. DW1 was examined on the defendants' side and marked Exts.B1 to B15 documents. Exts.C1 to C10 were also marked. The trial court decreed the suit. Challenging the decree and judgment, the defendants preferred the First Appeal. The First Appeal was also dismissed confirming the judgment and decree of the trial court. Hence, defendants 1 and 3 are before this Court with this Second Appeal.

7. Heard the learned counsel for the appellants, who are defendants 1 and 3, and the learned Government Pleader for respondents 2 and 3.

8. The learned counsel for the appellants contended that the decree for permanent prohibitory injunction has prevented the right of the appellants to move before the statutory Authorities to get requisite licence, in accordance with law. According to the learned counsel for the appellants, burial of dead-body is a fundamental right of the local worshipers of the Mission. Being a right of the local worshipers, according to the learned counsel for the appellants, it is regulated by the Rules. The learned counsel contended that when an equally and efficacious relief can be obtained from the statutory Authorities and Tribunals constituted under the Act, a civil suit for injunction is barred under Section 41(h) of the Specific Reliefs Act, 1963. Elaborating on the submission, the learned counsel for the appellants further submitted that the authority to take action in the case of burial ground or cemetery is the District Collector as per the Rules and the civil court has no jurisdiction to adjudicate on the issue.

9. The learned Government Pleader appearing for the respondents 2 and 3 submitted that the plaintiff and the public, at large, filed a mass petition before the District Collector to take appropriate action against the defendants for converting the plaint B schedule property into a burial ground. Consequently, according to the learned Government Pleader, the District Collector was pleased to stay conversion of the plaint B schedule property into the burial ground, which was communicated to defendants 1 to 3. The learned Government Pleader further submitted that the local authority has also issued a stop memo for further construction of the vault in the plaint B schedule property.

10. Regarding the title of the defendants over the plaint B schedule property, there is no dispute. The defendants fairly conceded that they have purchased the plaint B schedule property for the purpose of constructing a cemetery or burial ground in the plaint B schedule property for which they have made preparations. Alleging nuisance, the plaintiff filed the present suit for injunction. During the trial, Ext.C7 report of the District Geologist was obtained. The District Geologist clearly stated that the soil condition in the plaint A and B schedule properties is such that there is every chance of the well in the plaint A schedule property being contaminated, in case the plaint B schedule property is used as a burial ground. Admittedly, no permission from the statutory authorities was obtained to convert the plaint B schedule property into a burial ground, in accordance with the Rules. The plaintiff alleges nuisance against the defendants 1 to 3. Such a suit is maintainable even without the aid of Section 91 of the Code of Civil Procedure (CPC). An infringement of civil right can be questioned by the plaintiff before the civil court. It is invariably not necessary to seek appropriate remedies before the statutory authorities constituted under the Panchayat Raj Act to redress the grievance of the plaintiff. The suit for injunction simplicitor is maintainable before a civil court even without the aid of Section 91 of the CPC.

11. The defendants have no manner of right to use the plaint B schedule property as a burial ground without obtaining requisite licence, in accordance with the Rules. In fact, the District Collector and the local authorities stayed the illegal action of the defendants, consequent to the mass petition submitted by the local residents. The trial court and the First Appellate Court concurrently held that the plaintiff is entitled to get an injunction as prayed for.

12. This court can exercise its jurisdiction under Section 100 of the CPC only on the basis of substantial questions of law, which are to be framed at the time of admission of the Second Appeal. The concurrent findings of facts will not be disturbed by this Court, unless the finding of the two courts below are palpably perverse.

13. Reverting to the facts of the case in hand, it is clear that the plaintiff has been residing in the plaint A schedule property along with her two female children. The defendants have purchased the property for the purpose of constructing a burial ground. Of course, they have the right to construct a burial ground in the plaint B schedule property, provided it is sanctioned by law.

Otherwise, they have no right to construct the burial ground, on technical grounds. No substantial questions of law is involved in this Second Appeal. Hence, the Second Appeal is liable to be dismissed.

In the result, this Second Appeal is dismissed without prejudice to the rights and liberties of the appellants to obtain requisite licence from the competent authorities for commencing a burial ground in the plaint B schedule property, in accordance with law. There will be no order as to costs. Pending applications, if any, stand disposed of.