
(2001) 07 KL CK 0068
In the High Court Of Kerala
Case No : C.R.P. No. 1863 of 2000 B

Ramachandran, P.

APPELLANT

Vs

Kallianikutty Amma and Another

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 47, 9

Citation : (2001) 07 KL CK 0068

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : Anil Sivaraman, for the Appellant; K.V. Sohan, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—This Civil Revision Petition is filed against the Order in O.S. No. 116 of 1998 by the Plaintiff. There is a dispute between the Plaintiff and the first Defendant as to who is entitled to conduct the Pookazhakam at Sree Valayanad Temple, Kozhikode. The first Defendant approached the Deputy Commissioner u/s 57 (e) of the Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as the Act). The Deputy Commissioner gave his decision in favour of the first Defendant. Against the Order passed by the Deputy Commissioner, the Plaintiff preferred an appeal to the Commissioner. The Commissioner dismissed the appeal. Thereafter, u/s 62 of the Act, the Plaintiff instituted the suit challenging the order passed by the Deputy Commissioner and Commissioner. The suit was included in the list. Plaintiff wanted to adduce evidence. The court below by the impugned Order held that the Plaintiff cannot adduce evidence because, what is challenged is the validity of the Order passed by the Deputy Commissioner and Commissioner and the validity of the Order is to be adjudged on the basis of the evidence already adduced. It is that order what is challenged before me.

2. Section 57 of the Act says that "subject to the rights of suit or appeal hereinafter provided, the Deputy Commissioner shall have power to inquire into

and decide the following disputes and matters --

* * * *

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what that established usage of a religious institution is in regard to any other matter.

Counsel for the Respondents submits that power is given to the Deputy Commissioner to enquire in this matter. The power of enquiry, according to him, takes in the power to take evidence also and the Order of the Deputy Commissioner is subject to appeal to the Commissioner. Instead of filing a further appeal, the Act has provided for institution of a suit. Counsel for the Respondents submits that if an appeal is provided no further evidence can be adduced unless the court allows production of additional evidence akin to Order 21 Rule 47 Code of Civil Procedure. Counsel submits that merely because such Orders are liable to be attacked in a suit, it does not mean that the suit should be tried as a regular suit under the Code of Civil Procedure

3. Learned Counsel for the Petitioner brought to my notice the decision in *Srisailam Devasthanam Vs. Bhavani Pramamma and Others*, . That was a case under the Motor Vehicles Act. The question involved there was what is the power to be exercised by the appellate court against the award passed by the Tribunal. It was observed as follows:

It is now well settled position of law that where a statute provides a right of appeal to an established court without anything more as to the manner in which the appeal is to be disposed of, then the incidents of right of appeal will carry with it, the applicability of the rules of practice and procedure of that court with regard to its power to entertain an appeal filed, and its disposal, manner of exercise of that jurisdiction and the incidents thereof. This principle with its logical consequence will be extended to the filing cross-objections.

4. According to me, the Order, of the court below cannot be sustained. The court below takes the view that it is not a suit coming u/s 9 of CPC but it is a suit coming as per the provisions of Section 62 and hence, according to the lower court, the procedure followed under the CPC is not available. According to me, this reasoning has no legs to stand. It is an admitted principle that when a particular dispute is alleged to be resolved, by a civil court without anything more, the procedure followed in the Civil Court is to be followed. If (he matter is to be tried by a Civil Court, the provisions in Civil Procedure-Code will apply, unless of course, the statute says anything to the contrary. An examination of the various provisions of the Act does not show that any inhibition has been prescribed under the Act with regard to the procedure of a suit u/s 62. It may be true that if an appeal had been filed the right of the Appellant may be restricted. But, always there is a difference between the appeal and a suit. They are understood differently. The appellate power is restricted by the statute. So far as the suit is concerned, normally it is governed by the provisions of Code of Civil

Procedure. A special statute can restrict the procedure. But so far as there is nothing in the statute restricting the procedure, I am of the view that the procedure mentioned in the Code is to be followed. Hence, I am of the opinion that the court below is not correct in holding that Plaintiff is not entitled to adduce any evidence and has to argue only on the basis of the evidence adduced before the Deputy Commissioner. The order of the court below is set aside and the parties will be allowed to adduce evidence.

The C R. P. is allowed.